SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 404

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

GENERAL MOTORS CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. a]

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 14,786

GENERAL MOTORS CORPORATION, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

Petition for Review of, and to Set Aside, a Final Order of the National Labor Relations Board

Appendix to Petitioner's Brief—Filed January 30, 1962

[File endorsement omitted.]

[fol. 1] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SEVENTH REGION

Case No. 7-CA-2560

GENERAL MOTORS CORPORATION AND INTERNATIONAL UNIO , UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO

RELEVANT DOCKET ENTRIES

1960

Jan. 7. Amended charge filed.
Jan. 27. Amended complaint and notice of hearing issued.
Feb. 4. Answer to amended complaint received.
Feb. 5. Petition to intervene received.
Feb. 18. Order transferring case to Board dated.
Sept. 23. Notice of hearing issued.

1961

Feb. 20. Board's Decision and Order issued.
Mar. 22. Charging party's motion for reconsideration and oral argument received.
Apr. 21. Statement and motion of Petitioner in opposition to applications for reconsideration received.
Apr. 28. Petitioner's telegram, renewing motion that applications for reconsideration be dismissed and found to be without merit dated.
Sept. 29. Board's Supplemental Decision and Order issued.

[fol. 2] BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST EMPLOYER—GENERAL COUNSEL'S EXHIBIT 1(f)—Filed January 7, 1960

Charge Against Employer

Amended

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 7-CA-2560

Date Filed 1-7-60

Compliance Status Checked by: EK

1. Employer Against Whom Charge Is Brought

Name of Employer
General Motors Corporation

Number of Workers Employed—350,000

Address of Establishment (Street and number, city, zone, and State)

Nine plants in Anderson, Bedford, Indianapolis, Kokomo, Marion and Muncie, Indiana

Type of Establishment (Factory, mine, wholesaler, etc.)

Manufacturing

Identify principal product or service.

Manufacture of automobile parts

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (List subsections)

(5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

[fol. 3] 2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The employer refused by letter dated October 27, 1959, the request of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America made in writing and dated October 20, 1959, that it enter into collective bargaining upon the proposal of the said labor organization that a written agreement be entered into, supplementary to the subsisting collective bargaining agreement between the parties, providing for a form of union security covering the employees represented by the said labor organization in the above-mentioned plants commonly known as "agency shop" pursuant to which the said employees, and each of them, would be required as a condition of continued employment and whereby new employees, and each of them, would be required as a condition of employment after 30 days following the date of hire, whichever should be later, to pay a sum of money to the said labor organization equal to the initiation fee required of persons desiring to become members thereof and monthly, a sum equal to the dues required of members.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW)

4. Address (Street and number, city, zone, and State)

8000 E. Jackson, Detroit 14, Michigan

Telephone No. Lo. 8-4000, Ext. 351

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

American Federation of Labor & Congress of Industrial Organizations—815 16th St., Washington 6, D. C.

6. Address of National or International, if any

(Street and number, city, zone, and State)

Telephone No. ——, ——

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Harold A. Cranefield, (Signature of representative or person filing charge), General Counsel

January 6, 1960

—, —. —, —.

Willfully False Statements on This Charge Can Be Punished by Fine and Imprisonment (U. S. Code, Title 18, Section 80).

[fol. 4] Before the National Labor Relations Board

Excerpts From Amended Complaint and Notice of Hearing Dated January 27, 1960—General Counsel's Exhibit 1(h)—Filed January 27, 1960

It having been charged by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, herein called the Union, that General Motors Corporation, herein called the Respondent, has been engaging in and is engaging in unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 61 Stat. 136, as amended, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, issues this Amended Complaint and Notice of Hearing pursuant to Section 10 (b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8.

* * * * * * *

5. The Union is a labor organization within the meaning of Section 2(5) of the Act.

6(a). In 1958, the Board ruled that all such General Motors' employees in the categories specified in the bargaining unit described in paragraph 6 (b) below, as the result of a long history of collective bargaining between the Union and the Respondent, had come to constitute a single

company-wide multi-plant bargaining unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

6(b). All of Respondent's production and maintenance employees and mechanical employees in engineering department shops employed in the plants or facilities of Respondent covered by the National Agreement between the Union and the Company at which the Union has been certified as indicated in paragraph 6 (a) above, except employees of sales, accounting, personnel and industrial relations' departments, superintendents, general foremen, fore-[fol. 5] men and assistant foremen, and all other persons working in a supervisory capacity, including those having the right to hire or discharge and those whose duties include recommendations as to hiring or discharging (but not leaders), and those employees whose work is of a confidential nature, time study men, plant protection employees (but not to include maintenance patrolmen or fire patrolmen), all clerical employees, chief engineers and shift operating engineers in power plants, designing (drawing board), production, estimating and planning engineers, draftsmen and detailers, physicists, chemists, metalurgists, artists, designer-artists and clay plaster modelers, timekeepers, technical school students, indentured apprentices, and those technical or professional employees who are receiving training, kitchen and cafeterial help, employed in Respondent's numerous plants and facilities throughout the United States, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

7. The Union having been designated and selected by a majority of the employees in the unit set forth in paragraph 6 (b) above in elections conducted by the National Labor Relations Board by virtue of Section 9 (a) of the Act has been and now is the exclusive representative of all the employees in said unit and is so recognized by the Respondent for the purpose of collective bargaining in respect to pay, wages, hours of employment and other terms and conditions of employment.

8. The Respondent employs employees within the unit described in paragraph 6 (b) above, in nine plants in the cities of Anderson, Bedford, Indianapolis, Kokomo, Marion and Muncie in the State of Indiana.

9. On or about October 20, 1959, the Union requested Respondent to appoint a time and place for a meeting between the appropriate representatives of Respondent and the Union, for the purpose of collective bargaining concerning the exact terms of an agreement supplementary to the existing National Agreement between those two parties, whereby the employees represented by the Union [fol. 6] in Respondent's Indiana plants and facilities (not already members of the Union) and new employees hired thereafter should be required as a condition of continued employment after thirty days following the date of such supplementary agreement or of their initial employment (whichever is later) to pay the Union a sum equal to the initiation fee at each of its local unions involved and monthly sums equal to the regular dues required of its members at each location.

10. On or about October 27, 1959, Respondent refused and continuously to date has refused to comply with the request of the Union, referred to in paragraph 9 above, stating that it is the opinion of Respondent that such an agreement would be violative of the Act.

11. Respondent, by the refusal to bargain as set forth in paragraph 10 above, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has refused to bargain and is now refusing to bargain with the Union and thereby did engage in and is now engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act.

. . . . . .

13. The acts of the Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

Please Take Notice that on the 10th day of February, 1960, at 10:00 A. M., Eastern Standard Time, in Room 1009, Industrial Building, 232 W. Grand River Avenue, Detroit, Michigan, a hearing will be conducted before a duly designated Trial Examiner of the Board on the allegations set forth in the Amended Complaint, at which time and

place you have the right to appear in person, or otherwise, and give testimony.

You Are Further Notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Direc-
[fol. 7] tor, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Amended Complaint within ten (10) days from the service thereof and that, unless it does so, all of the allegations in the Amended Complaint shall be deemed to be admitted to be true and may be so found by the Board.

In Witness Whereof, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Amended Complaint and Notice of Hearing to issue against Respondent herein.

Dated at Detroit, Michigan, this 27th day of January, 1960.

/s/ Thomas Roumell, Regional Director National Labor Relations Board Seventh Region, 232 W. Grand River, Detroit 26, Michigan.

(Seal)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCERPTS FROM ANSWER OF RESPONDENT GENERAL MOTORS CORPORATION TO AMENDED COMPLAINT—GENERAL COUNSEL'S EXHIBIT 1(j)—Filed February 4, 1960

Now comes General Motors Corporation, the Respondent in the above-entitled matter, and makes answer to the Amended Complaint herein as follows:

* * * * * * *

5. Respondent admits solely for the purposes of this proceeding the allegations set forth in paragraph 5 of the Amended Complaint.

6(a) Respondent admits the allegations set forth in paragraph 6(a) of the Amended Complaint.

[fol. 8] 6(b) Respondent admits the allegations set forth in paragraph 6(b) of the Amended Complaint.

7. Respondent admits the allegations set forth in paragraph 7 of the Amended Complaint.

8. Respondent admits the allegations set forth in paragraph 8 of the Amended Complaint.

9. Respondent admits that on or about October 20, 1959, the International Union, UAW-AFL-CIO, directed the request to the Respondent described in paragraph 9 of the Amended Complaint.

10. Respondent admits the allegations set forth in paragraph 10 of the Amended Complaint.

11. Respondent denies the allegations set forth in paragraph 11 of the Amended Complaint.

• • • • • • •

13. Respondent denies the allegations set forth in paragraph 13 of the Amended Complaint.

Respectfully submitted, General Motors Corporation, By /s/ Henry M. Hogan, General Counsel, 3044 West Grand Boulevard, Detroit 2, Michigan, /s/ Harry S. Benjamin, Jr., /s/ K. Douglas Mann, /s/ Eugene L. Hartwig, Of Counsel.

Dated: Detroit, Michigan, February 3, 1960.

[fol. 9] Certificate of Service (omitted in printing)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 7-CA-2560

130 NLRB No. 54 D-1857 Indiana

GENERAL MOTORS CORPORATION AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO

DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD—
Filed February 20, 1961

DECISION AND ORDER

Upon charges duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, herein called UAW, the General Counsel of the National Labor Relations Board, by the Regional Director for the Seventh Region, issued a complaint and notice of hearing, dated December 14, 1959 [fol. 10] and an amended complaint and notice of hearing, dated January 27, 1960, alleging that the Respondent, General Motors Corporation, herein called GM, had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended. Copies of the complaint and notice of hearing, as amended were duly served upon the Respondent and the UAW.

The amended complaint alleges, in substance, that on or about October 27, 1959, GM refused and continuously to date has refused to comply with a request of the UAW, the exclusive representative of GM employees in an appropriate unit, to bargain concerning terms of an agreement supplementary to an existing agreement between the parties.

The Respondent's answer, in effect, admits the factual

allegations of the amended complaint, but denies the commission of any unfair labor practice.

On February 10, 1960, a hearing was held in Detroit, Michigan, before Trial Examiner Albert P. Wheatly. The General Counsel, the UAW, GM, and the Intervenor [1] appeared. In addition to testimony taken, all the parties entered into a stipulation of facts; they waived the preparation and issuance of an Intermediate Report, and agreed that this proceeding be transferred to the Board for findings of fact, conclusions of law, and a decision and order based on the pleadings and record made at the hearing. On February 18, 1960, the Board entered an order transferring this proceeding to it.

On October 27, 1960, the Board heard oral argument at Washington, D. C.

The General Counsel, GM, UAW, and the Intervenor appeared at oral argument and filed briefs. By leave [fol. 11] granted, the following filed briefs as *amicus curiae:* The Oil, Chemical and Atomic Workers International Union; Commercial Telegraphers' Union; AFL-CIO; Indiana State AFL-CIO, Indiana State Building and Construction Trades Counsil and Indiana Workers Protective Committee; American Federation of Labor and Congress of Industrial Organizations; United Steelworkers of America, AFL-CIO; National Manufacturers' Association; and the Retail Clerks International Association, AFL-CIO. Of the latter group, United Steelworkers of America, Commercial Telegraphers' Union, and Indiana State Building and Construction Trades Council also appeared and participated in the oral argument.

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[1] The Intervenor is a group of GM employees in the appropriate unit who are opposed to the UAW's proposed supplemental agreement. The intervention was limited to the filing of briefs and oral argument. 130 NLRB No. 54

Upon the basis of the pleadings, the stipulation of facts, and the entire record in the case, the Board makes the following:

Finding of fact

I. *The Business of the Respondent*

The Respondent, a Delaware Corporation with its principal business office located in Detrait, Michigan, maintains numerous plants and facilities in various states of the United States, including the State of Michigan, where it fabricates, manufactures, and assembles automobiles, automotive parts, and related products. Annually, the Respondent ships goods valued in excess of one million dollars from its plants and facilities within the State of Michigan directly to points located outside the State of Michigan. We find that the Respondent is engaged in commerce within the meaning of Act and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

II. *The Labor Organization Involved*

International Union, United Automobile, Aircraft and Ogricultural Implement Workers of America, UAW-AFL-CIO is a labor organization, within the meaning of Section 2(5) of the Act, admitting to membership employees of the Respondent.

[fol. 12] For the reasons more fully explicated in their separate opinions, a majority of the Board is agreed that the Respondent did not unlawfully refuse to bargain with UAW, and that the complaint should therefore be dismissed.

Order

It is Ordered that the complaint as amended herein be, and it hereby is, dismissed.

Dated, Washington, D. C.

Boyd Leedom, Chairman, Joseph Alton Jenkins, Member Arthur A. Kimball, Member National Labor Relations Board.

(Seal)

BOYD LEEDOM, Chairman, concurring:

As indicated above, the facts are not in dispute, the parties having stipulated to an agreed statement.

By letter of October 20, 1959, UAW requested GM to bargain concerning a proposal supplementary to their existing national agreement [2] under which the employees represented by UAW in nine GM plants in six Indiana cities (Anderson, Bedford, Kokomo, Indianapolis, Marion, and Muncie) and new employees hired thereafter would be required as a condition of continued employment after 30 days following the date of such supplementary agreement or of their initial employment (whichever is later) to pay [fol. 13] to the UAW a sum equal to the initiation fee charged by each of its local unions involved and a monthly sum equal to the regular dues required of union members at each location.

By letter, dated October 27, 1959, GM answered, stating that as an "agency shop arrangement • • • as • • • detailed in your letter of October 20, 1959, would violate the National Labor Relations Act, as amended, if incorporated in a collective bargaining agreement, we respectfully decline to comply with your request • • •."

The foregoing exchange of correspondence took place after a decision on June 19, 1959, by the Indiana Appellate Court, holding that an agency shop under which nonunion members are required, as a condition of employment, to pay the exclusive bargaining agent a fee, in the equivalent of dues, initiation fees and assessments paid by union members, was a legal union-security arrangement in the State

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[2] The national agreement, in effect from October 2, 1958, until August 31, 1961, and thereafter from year to year, provides for maintenance of membership and a union shop, except as follows:

> "(4b) Anything herein to the contrary notwithstanding, an employee shall not be required to become a member of, or continue membership in, the union, as a condition of employment, if employed in any state which prohibits, or otherwise makes unlawful, membership in a labor organization as a condition of employment."

notwithstanding Indiana's Right-to-Work Law.[3] The Court reasoned that Indiana's Right-to-Work Law, unlike right-to-work statutes of other jurisdictions which specifically prohibit or restrict agency shop arrangements, only forbids arrangements requiring union membership, and, as [fol. 14] an agency shop does not require union membership, the Indiana statute did not apply to an agency-shop arrangement.[4]

Apart from the issue concerning the validity of an agency-shop arrangement, all facts necessary for proof of an 8(a)(5) violation are either stipulated or conceded. The Respondent admits that "the charging party * * * is the certified collective bargaining representative for all hourly-rate production and maintenance employees at the Respondent's aforementioned Indiana plant locations and

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[3] The Right-to-Work Law of the State of Indiana, the place of employment of the employees involved herein, provides in pertinent part (Burn's Ind. Statutes, Ann. § 40-2703 C. P. S., Acts of 1957, Ch. 19, Sec. 3):

> No corporation or individual or association or labor organization shall solicit, enter into or extend any contract, agreement or understanding written or oral, to exclude from employment any person by reason of membership or nonmembership in a labor organization, to discharge or suspend from employment or layoff any person by reason of his refusal to join a labor organization. * * * Any such contract, agreement, or understanding, written or oral, entered into or extended after the effective date of this Act, shall be null and void and of no force or effect. * * *

Section 14 (b) of the National Labor Relations Act provides:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Terriorial law.

[4] *Meade Electric Company* v. *Hagberg*, 159 N. E. 2d 408 (1959), 44 LRRM 2312.

services the employees whom it represents at each of these plants through its local union * * *" The parties stipulated that, for the purposes of this case, they do not "intend to raise or rely" upon a provision in the national agreement which purports in broad terms to preclude any requirement of further bargaining during the term of the agreement. The parties are in agreement that, if UAW'S proposal is lawful, the subject matter of the proposal constituted a mandatory subject for collective bargaining and that GM's refusal to bargain with respect to it would violate Section 8(a)(5); but that, if UAW's proposal is unlawful, GM had no legal obligation to bargain as to it.

Thus, the issue to be determined is whether UAW's proposal for an agency-shop arrangement to cover GM employees employed in the State of Indiana is a lawful proposal under the National Labor Relations Act, as amended.

As indicated, GM contends that UAW's proposed agency-shop clause is illegal under the provisions of Section 7, Section 8(a)(1), and Section 8(a)(3).[5]

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[5] Section 7 of the Act provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Section 8(a)(1) and 8(a)(3), in relevant part, provides that: it shall be an unfair labor practice for an employer—

> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7:
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude

[fol 15] More specifically, GM contends that the exercise of rights of employees under Section 7 of the Act, as amended in 1947, and particularly the right to refrain from assisting a labor organization is limited only by agreements requiring union membership as authorized in Section 8(a)(3). GM asserts that, because an agency shop requires non-union employees to contribute financial support to a labor organization and because, for the reasons it hereinafter indicates, an agency-shop arrangement does not meet the requirements of Section 8(a)(3), an agency-shop arrangement, if adopted, would interfere with the exercise of rights guaranteed in Section 7, and would therefore constitute a violation of Section 8(a)(1).

[fol. 16] GM further contends that the first proviso to Section 8(a)(3) spells out the only type of agreement, i.e., an agreement limited to conditioning continued employment upon membership in a labor organization, that may per-

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an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made. * * * Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * * * *

missibly infringe upon rights guaranteed in Section 7 and not expose an employer to a violation of Section 8(a)(3). GM asserts that the first proviso to Section 8(a)(3) makes clear that to condition employment on anything other than membership in a labor organization is contrary to the statute. Finally, GM contends that, as UAW's proposal fails to meet the requirements of the first proviso to Section 8(a)(3), its proposal would afford GM no protection from the sweep of the basic no-discrimination provision of Section 8(a)(3) were it to enforce an agency-shop agreement against employees who refuse to pay support money, and thus the proposal is illegal.

On the other hand, the General Counsel and the UAW contend in substance that the first proviso to Section 8(a)(3) merely defines the outer limits of permissible union-security provisions and that the proviso encompasses within its scope lesser forms of union-security arrangements, including the agency shop which requires only the payment of the equivalent of dues and initiation fees but does not compel membership in a labor organization.

I agree with the Respondent, for the reasons set forth hereinafter, that the complaint should be dismissed. Although an "agency shop" agreement, such as that proposed by UAW, has been held to be lawful under the applicable law of Indiana, a "Right-to-Work" State, it is nevertheless, in my opinion, unlawful under the National Labor Relations Act in such a "Right-to-Work" State.

I reach this conclusion because, in my view, any union-security agreement, including one providing for an agency shop, necessarily interferes with the Section 7 right of employees to refrain from assisting a labor organization, [fol. 17] and encourages membership in a labor organization.[6] Such an agreement is therefore clearly unlawful

---

[6] As the record reflects, nonmembers would not be eligible to participate in union meetings, to vote on ratifications of agreements, or to vote on how their "support money" was to be spent. They would not be entitled as a matter of right to receive the Union's publication, or strike benefits, to participate in the Union's educational fund, or to have any of the other benefits guaranteed union members. Thus, although nonmembers would be required to pay to the UAW

under Section 8(a)(1) and (3), unless it is saved by the proviso to Section 8(a)(3) of the Act. That proviso permits an employer to make an agreement with a labor organization "to require as a condition of employment *membership* [emphasis supplied] therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later * * *". There is, however, no other provision in the Act which specifically legalizes the interference and encouragement inherent in an agency-shop arrangement, and the only question here is whether such an arrangement can be lawful under the National Labor Relations Act in a State like Indiana, where it is clear that an agreement requiring literal [fol. 18] membership[7] is prohibited by State law. To hold the agency shop lawful, one would have to conclude that Congress intended the word "membership" in Section 7 and 8(a)(3) to encompass not only literal membership,

---

the equivalent of the initiation fee and dues paid by members, they would be denied benefits, available to members, which would be available to them, without additional financial burden, if they become members. In these circumstances nonmembers would necessarily be encouraged to become members. For, as the courts have held, the existence of discriminatory benefits, based on union membership, "is inherently conducive to increased union membership * * * by increasing the number of workers who would like to join and/or their quantum of desire,"—even though the Union would reject all applicants for membership. *N. L. R. B.* v. *Gaynor News Co.*, 197 F. 2d 719, 722-723 (C. A. 2), affirmed 347 U. S. 17. If this is so when the union is closed, *a fortiori* is it so when as here the union is open. That the payment of money to a labor organization assists that organization is self-evident.

[7] By "literal membership" I mean the right of a union to require actual membership as a condition of employment, and a willingness to admit to membership all employees who tender the requisite initiation fees and dues; cf. *Union Starch & Refining Company*, 87 NLRB 779; *Radio Officers' Union* v. *N. L. R. B.*, 347 U. S. 17. Neither of these cases stands for the proposition that payment of initiation fees and dues can be required when literal membership cannot.

but also other relationships between employees and the union in the picture, while at the same time intending that the same word in Section 14(b) encompass only literal membership; or further, that Congress intended the word "membership" to mean one thing in Indiana and a different thing somewhere else. Such reasoning I am not prepared to accept. Thus, the conclusion is inescapable that an agency-shop arrangement whatever its status under Indiana law, cannot be lawful under the National Labor Relations Act in a State like Indiana where employment cannot lawfully be conditioned on literal membership.

In support of their contention that an agency-shop agreemen is lawful, the General Counsel and UAW rely on *Public Service of Colorado*, 89 NLBR 418, and *American Seating Co.*, 98 NLRB 800. Such reliance seems misplaced, as, unlike the instant matter, both cases involved a valid agreement, requiring membership as a condition of employment, which was protected under the first proviso to Section 8(a)(3); and neither case involved a "right-to-work" jurisdiction. Significantly, in both *Public Service* and *American Seating*, no legal impediment existed to preclude the parties from entering into the contracts requiring all employees to be union members, and they made such contracts. Thus they were free to waive in certain instances, as they did, the maximum requirement of union membership and to require in lieu thereof some lesser form of union security, such as an agency-shop clause.

The instant case is different in that, as indicated above, GM and UAW were not free under the National Labor Relations Act to require of Indiana employees union membership as a condition of employment, and so, they were not free to require, as a condition of employment of such employees, any lesser form of union security, such as an agency shop. For one cannot waive a right he does not have.

[fol. 19] Based on the foregoing considerations, I conclude that the agency-shop clause concerning which UAW requested GM to bargain is, under the National Labor Relations Act, illegal in Indiana, and that GM was under no obligation to negotiate concerning such a clause with UAW. Accordingly, GM not having violated the Act as alleged, the complaint should be dismissed.

Whether an agency-shop arrangement, such as that proposed herein, would be lawful in a non "right-to-work" State, is not before me and I express no opinion on that issue.

Dated, Washington, D. C.

Boyd Leedom, Chairman, National Labor Relations Board.

JOSEPH ALTON JENKINS, Member, concurring:

The parties stipulated to an agreed statement of or conceded to the facts herein.

The National Agreement between the parties, in effect from October 2, 1958, until August 31, 1961, and thereafter from year to year, provides for maintenance of membership and a union shop, except as to those employees "employed in any state which prohibits, or otherwise makes unlawful, membership in a labor organization as a condition of employment." Application of the National Agreement is prohibited in Indiana by the Indiana Right-to-Work Law.[8]

[fol. 20] On June 19, 1959, the Indiana Appellate Court held the State Right-to-Work Law inapplicable to a provision requiring all employees as a condition of employment to pay their exclusive bargaining agent a fee in the equivalent of dues, initiation fees and assessments paid by union

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[8] The Right-to-Work Law of the State of Indiana provides in pertinent part:

> No corporation • • • or labor organization shall solicit, enter into or extend any contract, agreement or understanding written or oral, to exclude from employment any person by reason of membership or nonmembership in a labor organization, to discharge or suspend from employment or layoff any person by reason of his refusal to join a labor organization. • • • (Burn's Ind. Ann. Statutes § 40-2703 C. P. S., Acts of 1957, Ch. 19, Sec. 3).

Although the statute asserts the right of employees to assist or refrain from assisting a labor organization, contractual interference with this right is not specifically proscribed.

members in the bargaining unit. Following the well-settled rule that penal statutes are to be strictly construed, the Court refused to construe a penal statute expressly prohibiting the entering into or application of an agreement requiring membership to proscribe an agreement which required support monies, noting that [9]

> "• • • it would seem that the clear, unequivocal language of the Indiana act was intended to apply to union membership and not to outlaw 'agency shop' agreements which provide for the payment of fees and dues to labor organizations properly designated as collective bargaining representatives. Had the legislature intended to make such provisions and such conduct illegal it should have been so expressly declared in the language of the act."

On the ground that section 14(b) of the federal Act "specifically authorizes and recognizes the validity of Right-to-Work Laws of the several states," the Indiana Appellate Court found it unnecessary to consider the preemption problems which might arise were the State legislature also to attempt to regulate conduct encouraging membership in or assisting labor organizations representing employees engaged in an industry affecting commerce, that is conduct covered by provisions of the federal act other than the provisos to Sec. 8(a)(3).

On October 20, 1959, the UAW asked GM by letter to bargain with respect to its proposal for a supplemental agreement to apply to its employees in Indiana which would require "employees represented by UAW who were not already members and new employees hired thereafter" [fol. 21] "as a condition of continued employment after 30 days following the date of such supplemental agreement or their initial employment (which ever is later) to pay the UAW sums equal to the regular dues required of union members on such locations." The Union characterized this proposal as an "agency shop." The proposal was based on the terms found not unlawful under the Indiana Right-to-Work Law by the State Court, excluding assessments.

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[9] *Meade Electric Company v. Hagberg*, 159 N. E. 2d 408 (1959), 44 LRRM 2312, 2315-2316.

On October 27, 1959, GM replied by letter respectfully declining to schedule a meeting "to enter into such a supplemental agreement" on the ground that the "agency shop arrangement as * * * detailed in the letter of October 20, 1959" "would violate the National Labor Relations Act, as amended, if incorporated in a collective bargaining agreement."

On October 29, 1959, the UAW filed charges alleging that this refusal violated Section 8(a)(1) and (5) of the Act. In answer to the complaints, GM admitted that it had refused to negotiate or enter into a contract on the ground that it believed the proposal violative of the Federal Act but denied that its refusal violated 8(a)(1) and (5).

At the hearing, the parties attempted further to clarify their positions. Both stipulated that they would not raise or rely upon a provision in the National Agreement intended to preclude requirement of further bargaining during the term of that agreement. UAW indicated that it would not change or modify the basic terms in its initial request during any subsequent bargaining conference which might be ordered, suggesting possible compromises on the length of the grace period afforded employees and similar matters as the only elements on which it might vary the proposal. GM indicated that it had no intention of expanding its reasons for refusing to negotiate or enter into the proposed supplemental agreement. Both parties agreed that they wanted a decision from the Board which definitely indicates "that an 'agency shop' under Taft-Hartley is either legal or illegal." At the request of the General Counsel, the Trial Examiner accepted the further stipulation [fol. 22] that all the parties waived any remedy requiring the posting of any notices by the Respondent.

Respondent introduced into evidence the Union's current Constitution and called Leonard Woodcock, Union Vice President in charge of the General Motors Department of the Union since 1955, to explain the comparative Union rights of members and nonmembers who would be required to pay the equivalent of a union initiation fee and monthly union dues under the Union's proposal. He testified that the nonmembers would not be eligible to participate in Union meetings, to vote on ratification of agreements entered into or negotiated by the Union on their behalf, or

to vote on how any of their "support money" was to be allocated by the Union. They would not be entitled as a matter of right to receive the Union's publication "Solidarity" nor would nonmembers have any guarantee that their payments would entitle them to strike benefits, participation in the Union's Educational Fund, or to any of the other benefits guaranteed union members, since, as he pointed out, "our constitution isn't written in terms of non-members."

NOT IN ISSUE

The agreemnt between the parties limits the issues to be considered by the Board. To eliminate possible doubt as to the import of this case for Board decisions involving Sections 8(a)(5) and 8(b)(3), I feel it incumbent upon me to state some questions which are *not* here in issue. This case does not involve the question of the extent to which an employer must bargain on a subject of mandatory bargaining if, but confronted with an initial illegal proposal thereon. Concededly "union security" is a subject of mandatory bargaining under the Act and the mere request for an illegal union security provision neither terminates the duty to bargain thereon nor itself constitutes a refusal to bargain.[10] Nor the question whether the Respondent's ex-[fol. 23] planation for its refusal to bargain on the "agency shop" proposal sufficed, without more, to fulfill its obligation to bargain thereon.[11] In view of the disagreement among the able attorneys involved in this proceeding and the Board itself, I cannot say that, right or wrong, the legal reason given for refusal was not urged in good faith.[12]

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[10] See *Andrew Jergens Co.*, 76 NLRB 363, 365, enfd. 175 F. 2d 130, 133 (C. A. 9, 1949), cert. den. 338 U. S. 827, and *National Maritime Union of America*, 78 NLRB 971, 981, enfd. 176 F. 2d 686 (C. A. 2, 1949), cert. den. 302 U. S. 753.

[11] See *The Cincinnati Steel Castings Company*, 86 NLRB 592, 594.

[12] Clearly, this is not a situation in which the Respondent urged legal reasons which it knew or should have known were not valid or in which other factors reflect on its good faith. See *The Andrew Jergens Company*, 76 NLRB 363, 379.

It is also clear that the Respondent's position did not evince a mind closed to persuasion or without sincere purpose to find the basis for agreement, which in fact the parties have sought through their agreement to submit to the Board for its resolution their dispute as to the legality of the UAW's so-called "agency-shop" proposal. It is only that dispute which must be resolved.

The Issue

As presented by the parties, the issue to be determined is the legality of incorporating into a contract and enforcing a provision requiring all GM employees (not already members of the Union) and all new employees in the State of Indiana to make payments in the equivalent of initiation fees and dues to UAW as a condition of continued employment. As stated by other participants in the proceeding, the issue was enlarged to include such questions as whether it would violate 8(a)(3) to agree to give employees an option to join the union or to pay "service charges" or be fired and whether the federal Act permits any form of "agency shop."

Neither the parties nor the other participants attempted rigidly to define an "agency shop" or to distinguish, with [fol. 24] any precision, among variations on "union shop" clauses,[13] incorporating "modifications" such as maintenance-of-membership during the contract term for those who choose during the grace period to remain or to become members, a requirement of membership by *all* employees *except* (1) those having conscientious objections to some of the uniformly imposed requirements for membership or to membership in any association including others than those

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[13] In sustaining the constitutionality of the 1951 amendment to the Railway Labor Act permitting a "union-shop" comparable to that provided in the provisos to 8(a)(3) of the Taft-Hartley Act, Justice Douglas stated for the Court:

> "The union shop is a variant of the closed shop, since union membership is required of every employee after the 60-day period designated by the Act."

Railway Employees' Department, AFL, et al. v. Hanson, et al., 351 U. S. 225 at 231, fn. 3 (1956).

of the religious body to which he belongs; (2) those older employees who have consistently rejected union membership; (3) those employees who prefer to contribute to some charity or to some particular union activity in lieu of joining the union, and the like. Such variations among "modified union-shop" clauses are legion.[14] There is similar variation among agreements characterized as establishing an "agency shop," [15] as the contentions in this proceeding clearly illustrate. Under these circumstances, I think it better to avoid use of the label "agency shop". [16]

[fol. 25] I shall therefore limit my basic consideration to the question of legality of the UAW's basic proposal. To repeat, that proposal, as stated in the request and in the complaints, reads:

> the employees represented by the Union in Respondent's Indiana plants and facilities (not already members of the Union) and new employees hired thereafter shall be required as a condition of continued employment after thirty days following the date of such supplementary agreement or of their initial employment (whichever is later) to pay to the Union a sum equal to the initiation fee at each of the local unions involved

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[14] For variations, see *Union Contract Clauses*, CCH, Inc. (1954) par. 51,080; 51,080.28-.50; "Union Security and Checkoff," BNA, LRX 643-644.

[15] The definition of "agency shop" as one which obligates "employees who don't join the Union to pay the equivalent of dues for the union's services" merges with a definition of "modified union shop" as one which requires "some but not all employees to belong." This merger is apparent from the different emphasis placed upon the precedent cited to the Board as controlling herein.

[16] In sustaining the constitutionality of the Right-to-Work Amendment to the Nebraska Constitution and the North Carolina Right-to-Work Laws, Justice Black found similarly expedient the avoidance of references to "open," "closed," "union," "union-security" shops and provisions. See *Lincoln Federal Labor Union et al. v. Northwestern Iron and Metal Co., et al.*, and *Whitaker et al. v. North Carolina*, 335 U. S. 525, 528, at fn. 2 (1949).

and monthly sums equal to the regular dues required of its members at each location.

It is to be noted that, unlike the "modified union-shop" clauses listed above, the UAW's proposal is unrelated to any contractual requirement for union membership and without contractual specification of the employee's *option* to join or not to join. Although there are auxiliary questions, the ultimate issue is whether a certified bargaining representative may, without regard to any agreement requiring membership of any employee, condition the continued employment of non-members and new employees upon payments to it *for such representation* of sums equal to the initiation fees and monthly dues required by it of members for membership.

Statutory Provisions Involved in Contentions

Section 7, as amended, guarantees employees the right to "form, join, or assist labor organizations" and "the right to refrain from any or all such activities except to the extent that such right may be affected *by an agreement requiring membership* in a labor organization as a condition of employment as authorized in Section 8(a)(3)." Section 8(a)(3) prohibits "discrimination" in regard to any term or condition of employment "to encourage or discourage *membership* in any labor organization," with a proviso that [fol. 26] "nothing in this Act shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined • • • as an unfair labor practice) to require as a condition of employment *membership* therein" and further provides that "no employer shall justify any discrimination against an employee for non-membership in a labor organization" if "(A) he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to *other members*, or (B) if he has reasonable grounds for believing that *membership* was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining *membership*." (Italics added.)

CONTENTIONS OF THE PARTIES

GM contends that UAW's proposed "agency shop" clause, if adopted and made effective, would cause it to violate Sections 8(a)(3), 8(a)(1) and to interfere with rights accorded individual employees by Section 7 of the Act, as amended in 1947.

GM asserts that the first proviso to Section 8(a)(3) spells out the only type of agreement which may affect the right of employees guaranteed in Section 7, i. e., one conditioning continued employment on "membership." It contends that the UAW proposal would cause it to discriminate against employees for failure to assist a labor organization, with regard for "membership" or "non-membership" or the availability to the employees of membership, interfering with a right guaranteed in Section 7 and expressly qualified only by an "agreement requiring membership as authorized in section 8(a)(3)." It further contends that requiring nonmember employees to contribute the *same* financial support to the Union as may, under Section 8(a)(3)(B), be *exacted* as a condition of employment from members or required to be *tendered* by non-members as a condition of establishing job rights protected despite [fol. 27] nonmembership under the existing National Agreement where applicable, would penalize their refusal to join or illegally encourage their joining because members acquire benefits under the Union Constitution denied to nonmembers in bargaining units represented by the UAW. Finally GM contends that UAW's proposal fails to afford it protection from the broad sweep of the basic no-discrimination provision of 8(a)(3) were it to discharge employees who refuse to pay support money rather than "for nonmembership" which the statute states can be justified under certain conditions. GM asserts this is a case of first impression.

On the other hand, the General Counsel and the UAW contend that the first proviso to Section 8(a)(3) merely defines the outer limits of permissible union-security provisions and that the proviso encompasses within its scope lesser forms of union-security arrangements, including the "agency shop" which requires only the payment of the equivalent of dues but does not *compel* membership in a labor organization. They rely on two cases: *Public Service*

of Colorado, 89 NLRB 418 (1950), and *American Seating Co.*, 98 NLRB 800 (1952).

Other participants assert that the first proviso to Section 8 (a)(3) delimits the maximum permissible reach of union-security provisions, but contend that proviso (B) has, in its application, equated the tender of initiation fees and dues with the maximum requirements of "membership" making the equivalent exaction without regard for membership as legal. Further policy arguments relate to the impact upon labor organizations in the so-called Right-to-Work states of the problem of "free riders."

Proponents of both positions rely on various statements in the Board and Court decisions in *Union Starch and Refining Company*, 87 NLRB 779 (1949), and *N.L.R.B. v. Radio Officers' Union of the Commercial Telegraphers' Union, AFL, et al.*, 347 U.S. 17 (1954).

[fol. 28] DISCUSSION

Introduction

The precise issue before the Board is a very narrow one. The Board is *not* dealing with a situation where the proposed agreement *requires* either *membership* in *or support money payments by an employee who elects, pursuant to a contractual option, not to join a union.* I would find such an agreement legal under Section 8(a)(3). Having found such an agreement legal under the federal Act, I would then be required, by Section 14 (b) of the Act,[17] to look to the law

[17] Sec. 14 (b) provides:

> "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

Explicating the interrelation between state and federal law regulating union-security agreements under the Wagner and Taft-Hartley Acts, Justice Frankfurter stated:

> "The contention that §10 (a) of the Wagner Act swept aside State law respecting the union shop must

of the state where the agreement was made or applied to determine its validity under State law.[18] As both must be looked at, it is immaterial whether the Board looks first to the State law or to the Federal Act. The Board is *not* dealing with a situation where the proposed agreement "explicitly deals with *membership* in a union as a condition [fol. 29] of employment" as a requirement or as an option to a related requirement. It is *not* dealing with a situation in which an employer seeks to justify what would otherwise be "discrimination" by reason of the existence of an agreement *requiring membership*. It is confronted here with a provision which would require all nonmembers and new employees *as a condition of employment* to pay the equivalent of full initiation fees and dues. As *membership* is not involved as a requirement for or condition of employment, §8(a)(3) may be read without reference to any proviso.[19] In this context, "[t]he unfair labor practice is for an employer to encourage or

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therefore be rejected. If any provision of the Act had that effect, it could only have been §8 (3), which explicitly deals with *membership* in a union as a condition of employment * * * States are left free to pursue their own *more restrictive* policies in the matter of union-security agreements. 'Because §8 (3) of the new Act forbids the closed shop and strictly regulates the conditions under which a union-shop agreement may be entered, §14 (b) was included to forestall the inference that federal power was to be exclusive." *Algoma Plywood & Veneer Company v. Wisconsin Employment Relations Board*, 336 U. S. 301, at 306-307, 314. (Emphasis added.)

[18] *Colgate-Palmolive-Peet Co. v. N. L. R. B.*, 338 U. S. 355, 361 (1949).

[19] "The meaning of the statute in its application to different circumstances may be debatable. Clearly §8 (a)(3) may be read thus: It shall be an unfair labor practice for an employer to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment." *N. L. R. B. v. Int. Brotherhood of Teamsters*, 196 F. 2d 1, 4 (C.A. 8, 1952), reversed on another point 347 U. S. 17.

discourage membership by means of discrimination."[20] There can be no doubt that disparate conditioning of further employment upon payment of certain monies is clearly discriminatory.[21] It is as clear that such discrimination tends to encourage membership by non-members and new employees and maintenance of membership by present members, and to discourage membership in any other union, in violation of Section 8(a)(3). Consequently, the proposal advanced by the Union in this case is a proposal which does not have the sanction of Federal law.

[fol. 30] *Analysis of precedents cited*

For the reasons stated above, the provisos to §8(a)(3) are not involved in this case. Three of the chiefly cited cases turn on such provisos: *Public Service, American Seating*, and *Union Starch*.

In the *Public Service* case, the Board found no unlawful discrimination under Section 8(3) of the Wagner Act where an employee whose tender of initiation fees and dues in application for union membership had been rejected and who subsequently becoming delinquent in his "support money" payment, was discharged under a contract which provided for a dues' equivalent in support-money *as to all employees not covered by the maintenance-of-membership clause*. The Board did not consider the impact which the Taft-Hartley amendments incorporated on Section 7, the provisos to 8(a)(3), or 14(b) would have on the range of permissible union-security provisions, because the saving clause in Section 102 was operative. That was a Wagner Act case in which an employee was discharged for refusal to support a union which had denied him membership for

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[20] *Radio Officers' Union v. N. L. R. B., et al.*, 347 U. S. 17, 42 (1954). This statement of the reading to be given the language of §8(a)(3) depended, of course, on the fact that no issue considered related to the validity of a union-security contract or discriminations a valid union-shop contract might sanction.

[21] *Id.* at 39, where the Court lists a "clearly discriminatory": "involuntary reduction of seniority, refusal to hire for an available job, and disparate wage treatment."

an unascertained reason other than his refusal to tender appropriate monies. The decision is not relevant for the purpose of construing either the main clause or first proviso to Section 8(a)(3) of the Act. Were the option to join or to pay the equivalent in dues for support one free to the employee to make, he would be protected against such reprisal by proviso (A) or (B) to Section 8(a)(3) of the Act. This is apparent from the decision in *Union Starch* protecting from discharge employees similarly denied *membership* upon the tender of such monies.

In the *American Seating* case, the Board permitted as a bar to an election a contract which required all employees covered by the contract, except those having religious objections to union membership, to become or remain members of the union and required all such religious objectors to pay to the union a monthly sum equivalent to the amount of union dues. The contracting parties in both those cases were free to enter into a contract requiring as a condition of employment union membership, and did so. [fol. 31] Neither case involved support monies for the representative from employees within the bargaining unit apart from some "agreement requiring membership." In both, the same contractual sanction was imposed against the member who failed to pay dues as was imposed against the nonmember who failed to make support money payments. Both acknowledged a distinction between the obligations of members to the labor organization of which they are members and of nonmembers represented by that labor organization in a unit which includes members.

I do not question the basis for either decision, merely the relevance of either as a guide to decision of the issues in this case. There is no clue in the *Public Service* decision that the *alternatives* were open to all employees within the bargaining unit. If membership were not equally available to all employees upon uniform terms the contractually afforded option might in itself, under the *Radio Officers'* decision, illegally "encourage membership."[22] In *American Seating*, the ground for exoneration from the obligation

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[22] *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17, at 51-52.

of membership cannot be viewed as tending to encourage or discourage union membership. The option was with the employee and based on a nondiscriminatory consideration unrelated to union membership. The important distinction between both cases and the present case is both did involve *explicit* contractual *requirements* for *membership*, and the alternatives were related thereto.

Unlike *Public Service* and *American Seating*, the valid union security agreement *requiring membership* in *Union Starch* afforded no alternatives to "membership" for the employee. As the employer had reasonable grounds for believing that membership was denied certain employees for "reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership," the question was whether the further proviso (B) to Sec. 8(a)(3) protected an employee who had made such tender from discharge for nonmembership. In a decision which con- [fol. 32] siders at length the legislative history of the provisos to Sec. 8(a)(3), the Board concluded that proviso (B) protects the employee who tenders the requisite amount of dues and initiation fee and is denied membership for any other reason, even though that reason be nondiscriminatory. It concluded that if a union "imposes any other qualifications and conditions for membership with which he is unwilling to comply, such an employee may not be entitled to membership, but he is entitled to keep his job."[23] While

[23] See summary of holdings in *Union Starch & Refining Co. v. N. L. R. B., et al.*, 186 F. 2d 1008, 1011-1012 (C. A. 7, 1951), cert. den. 342 U. S. 815. In conclusion, the Court stated (at 1012):

> "We agree that the Union had the right, under the statute here involved to prescribe nondiscriminatory terms and conditions for acquiring membership in the Union, but we are unable to agree that it may adopt a rule that requires the discharge of an employee [pursuant to a valid union-security provision] for reasons other than the failure of the employee to tender the periodic dues and initiation fees. We think the Board construed the statute in a reasonable manner and gave

this gives the employee the privilege of refusing with impunity to comply with additional requirements for membership, or of membership, it cannot be said to equate "membership" with the payment of periodic dues and initiation fees.[24] That decision has even less relevance for the present problem than those cases involving contractual alternatives to required membership.

While *Radio Officers' Union* contains a careful analysis of the problem of encouragement of union membership by employers, within the meaning of Section 8(a)(3), none of the discriminatory situations[25] therein found to encourage [fol. 33] adherence to union obligations or to tend to encourage the desire for union "membership" involved any contractual obligation imposed upon employees as a condition for their continued employment. That decision becomes relevant here as a guide to the proper interpretation to be given such generic phrases. It is pertinent here that the Court there stated the limits to "permissible encouragement" of "membership" by reference to *contractual requirements for membership* and in the context of the purposes of the provisos to Section 8(a)(3) thusly:[26]

> "*The policy of the Act is to insulate employees' jobs from their organizational rights.* Thus § 8(a)(3) and 8(b)(2) were designed to allow employees to freely

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effect to all its provisions, and that its interpretation was in harmony with the purpose of Congress to prevent utilization of union security agreements except to compel payment of dues and initiation fees, and that the Board was justified in its conclusions."

[24] To do so, absent the labor organization's decision to that effect, ignores proviso (A) and the proviso to Section 8 (b)(1)(A).

[25] I. e., involuntary reduction of seniority for delinquent dues payments by a member, refusal to hire for an available job a member who sought employment without seeking clearance from the union and who was thereafter refused such clearance by the union, disparate wage treatment of union members and nonmembers.

[26] *Radio Officers' Union* v. *N.L.R.B.*, 347 U. S. 17, 40-42 (1954).

exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood. *The only limitation Congress has chosen to impose on this right is specified in the proviso to §8(a)(3) which authorizes employers to enter into certain union security contracts, but prohibits discharge under such contracts if membership 'was not available* to the employee on the same terms and conditions generally applicable to other members' *or if 'membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.*[41] Lengthy legislative debate preceded the 1947 amendment to the Act which thus limited permissible employer discrimination. This legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. Thus *Congress* recognized the validity of unions' concern about 'free riders,' i. e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and *gave unions the power to contract to meet* [fol. 34] *that problem while withholding from unions the power to cause the discharge of employees for any other reason. Thus an employer can discharge an employee for nonmembership in a union if the employer has entered a union security contract valid under the Act with such union security if the other requirements of the proviso are met. No other discrimination aimed*

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[41] • • • That Congress intended §8(a)(3) to proscribe all discrimination to encourage union membership not excepted by the proviso see H. Cong. Rep. No. 510, 80th Cong., 1st Sess. 14, where it is stated that §8(a)(3) "prohibits an employer from discriminating against an employee by reason of his membership or nonmembership in a labor organization, *except to the extent he obligates himself to do so under the terms of a permitted union shop or maintenance of membership* contract." [Emphasis supplied.]

at encouraging employees to join, retain membership, or stay in a union is conditioned. [Emphasis supplied.]

I have set forth in its entirety that portion of the opinion relied upon, with benefit from partial quotation, both by those who contend the UAW proposal valid and those who contend it illegal under the Act. In my opinion, this statement of the limits to permissible encouragement of union membership restricts unions, in contractually guaranteeing their own financial security against "free riders," to agreements of the type contemplated by Congress, i.e., "a permitted union shop" or "maintenance of membership contract," both being agreements explicitly "requiring membership." However, the Court in the *Radio Officers'* case was not passing upon the vali lity of a contract conditioning continued employment of employees who were not members of the contracting union and new employees upon their payment to such union of monies equivalent to regular initiation fees and dues.

[fol. 35] CONCLUSION

Section 8(a)(3) of the National Labor Relations Act makes unlawful any contract term which illegally encourages or discourages union membership, *specifically permitting* (unless prohibited by State law) *agreements "requiring union membership* as a condition of continued employment" *under careful controls to guarantee that the union will be open to all who seek membership on the same terms and specifying the sole reason for which an employee may be discharged for "non-membership,"* i.e., his failure to tender the periodic dues and initiation fees uniformly required "as a condtiion of acquiring or retaining membership."[27]

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[27] The Board with judicial approval has construed the phrase, "membership in a labor organization" to mean "membership" as that phrase is commonly construed and understood. *Union Starch & Refining Co. v. N. L. R. B.*, 186 F. 2d 1008, 1011-1012 (C. A. 7, 1951), cert. den. 342 U. S. 815, enfg. 87 NLRB 779 (1949). To hold otherwise is to torture the clear and unambiguous words of the statute or not to give effect to all of its provisions. E. g., Sections 7, 8 (a)(3), 8 (b)(1)(A), 8 (a)(2), 8 (b)(5), 8 (b)(f), 14(a),

Such statutory protection of "individual employees in their relations with labor organizations" to job rights affords a union no right to financial security through support monies from nonmembers whom it represents in a unit *not* covered by a contract "requirnig *membership*."

It is one thing, where there is in existence a valid union-securtiy agreement requiring membership, to allow an employee, at his option, not to become a member if he makes [fol. 36] uniform payments in support of representation by his representative. It is quite another thing, when he cannot be required to become a member, to require such support from him.

As the Supreme Court has noted, "It is common experience that the desire of employees to unionize is raised or lowered by the advantages thought to be attained by such action." [28] I can only conclude that the UAW proposal which would exact from *all* nonunion members and new employees in the bargaining unit, without regard for their obligations or election as to joining the union, the very same sums the Act sanctions as exactions which may be required from *members* as a condition of continued employment pursuant to a valid union-shop agreement can have no other foreseeable consequence than tending to encourage membership in the UAW or discourage membership in any other union.

14(b), 302—all of which contain references either to "members" or "membership" in labor organizations. There is no need to cite the authorities which support such an approach to the problem of interpretation to be given statutory terms having common meaning. As Justice Burton has stated, "the essential element of *membership* in an organized group" is the "desire of an individual to belong to the organization and a recognition by the organization that it considers him as a member." *Jencks v. United States*, 353 U. S. 657, 679 (1957). This is in accord with the statutory definition of "member" contained in Section 3(o) of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257; 73 Stat. 519), i.e., "any person who has fulfilled the requirements for membership in such organization."

[28] *Radio Officers' Union v. N.L.R.B., et al.*, 347 U. S. 17, 51 (1954).

Realistically considered, the UAW sought a contract provision which, consistent with the prohibition within the State of contracts requiring membership, would nevertheless impose upon nonmembers and new employees the financial burden of supporting it as their representative and to the same extent it could impose such burden upon all employees it represents within a bargaining unit covered by a union-shop provision, valid both under Federal and State law. This is tantamount to charging for representation, contrary to the rights of a bargaining representative required "not to discriminate in the execution of its duties between its own members and employees who belong to another union or to no union." As the Court stated in *Hughes Tool Company v. N.L.R.B.*:[29]

> The Act makes no provision for paying the bargaining representative. When a union serves as such, it looks for its financial support to the agreement of its members to pay dues * * * It must serve all em- [fol. 37] ployees alike as their representative and secure itself in its office of representative only by the skill, efficiency, and fairness with which it executes that office.

Based on these considerations, I conclude that the particular clause concerning which UAW requested GM to bargain was illegal and GM is under no obligation to negotiate thereon. Accordingly, finding that GM has not violated the Act as alleged, I join Chairman Leedom and Member Kimball in dismissing the complaint.

Dated, Washington, D. C.

Joseph Alton Jenkins, Member National Labor Relations Board.

ARTHUR A. KIMBALL, Member, concurring:

I concur in the ultimate result reached by Chairman Leedom and Member Jenkins, and in agreement with them, I would dismiss the complaint herein which alleges a violation of Section 8(a)(5) of the Act.

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[29] 147 F. 2d 69, 74-75 (C. A. 5, 1945), cited with approval in *Conley, et al. v. Gibson, et al.*, 355 U. S. 41, 46 (1957).

I also agree with their conclusion that the so-called agency shop contract which the Union sought to negotiate with Respondent, does not fall within the mandatory field of collective bargaining. It would not fall within the protection of the proviso to Section 8(a)(3) of the Act, and thus would constitute a violation of Section 8(a)(1) and (3), as well as unlawful interference with the employees in the exercise of their rights guaranteed in Section 7 of the Act.

I would further find that the granting of such a contract would constitute unlawful assistance to the labor organization in violation of Section 8(a)(2) of the Act, and a discharge requested by the Union thereunder and honored by the Employer would constitute violations of 8(b)(2), 8(a)(1) and 8(a)(3) of the Act.

I am in agreement with so much of the rationale in the separate opinions of Chairman Leedom and Member Jenkins which supports the aforesaid conclusions of law.

[fol. 38] However, in view of the extreme importance of the question presented by the instant case and its impact upon the broad field of labor relations, I feel I should set forth in some detail my principal ground in support of my ultimate decision to dismiss the complaint herein.

The facts of record in the instant case upon which I rely and which I will treat with hereinafter, are as follows:

Respondent introduced into evidence the Union's current constitution and called Leonard Woodcock, union vice-president in charge of the General Motors Department of the Union since 1955, to explain the comparative union rights of members and support money employees who would be required to pay the equivalent of a union initiation fee and monthly union dues under the Union's proposal. He testified that the support money employees would not be eligible to participate in union meetings, to vote on ratification of agreements entered into or negotiated by the Union on their behalf, or to vote on the use of their "support money" by the Union. They would not be entitled as a matter of right to receive the Union's publication "Solidarity," nor would these support money employees have any guarantee that their payments would entitle them to strike benefits and participation in the Union's Educational Fund, or to any of the other economic benefits

guaranteed union members, since, as Mr. Woodcock pointed out, "our constitution isn't written in terms of non-members." I find this evidence to demonstrate conclusively that not only are the support money employees excluded from the social benefits and activities of the Union but they are likewise not permitted a voice, or any form of participation, apart from their contribution of support money, in formulation of policies, decisions; or any other of the Union's activities relating to their economic interests as employees or to the Union's representation of these interests vis-a-vis their employer.

When Congress enacted the original Wagner Act it provided, among other things, that a labor organization when selected by a majority of the employees in an appropriate unit to act as their representative for collective bargain- [fol. 39] ing purposes should become the exclusive agent of both the majority who voted for the selection of such an agent as well as of the dissenting minority who voted against such selection. The concept thus created is wholly statutory in origin.[30] It is also settled that except for the Act, employers are not under compulsion of law bound to baragin collectively.[31] In speaking of the nature of the duties imposed upon such bargaining agent, the Supreme Court in *Wallace v. N.L.R.B.*, 323 U. S. 248, 255, held that:

> *The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interest of its own group members.* By its selection as bargaining representative, it has become the agent of all the employees charged with the responsibility of representing their interests fairly and impartially. (Emphasis supplied.)

In enacting the proviso to Section 8(a)(3), Congress effected a compromise between allowing a total closed-shop situation and no compulsory unionism at all by delimiting the area within which a union acting as the exclusive bar-

[30] See *Virginian Company v. System Federation No. 40*, 300 U. S. 515, 544-549; *N. L. R. B. v. Jones and Laughlin Steel Corp.*, 301 U. S. 44-45.

[31] *N. L. R. B. v. Jones and Laughlin Steel Corp., supra; National Maritime Union* v. *Herzog*, 78 F. Supp. 146, 155.

gaining agent could bargain with respect to compulsory union adherence.

The proviso to Section 8(a)(3) was enacted to answer the argument that employees who enjoyed the benefits of collective bargaining without paying their proportionate share of the cost of representation were "free riders."[32] It follows therefrom that when such nonconsenting employees do pay their proportionate share of the cost of representation particularly where, as under the proviso, the failure to so tender their dues and initiation fees places their job [fol. 40] security in jeopardy when requested by the union, they should be allowed at least an economic voice in the functioning of the exclusive bargaining agent in its representation of them before the employer, and in its carrying out the statutory function of collective bargaining.

That employee participation in the functioning of the exclusive bargaining agent is clearly contemplated by the Congress is shown by the very definition of terms in the Act itself. Thus—

> The term "representatives" includes any individual or labor organization. (Sec. 4)

and further—

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, *in which employees participate* and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (Sec. 5) (Emphasis supplied.)

It is thus clear that if, as in the instant case, those who would pay an equal fee for the Union to carry out its function as the exclusive bargaining agent, are denied equal rights to participate in and benefit from the bargaining process, they would have a second-class status, and thus

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[32] Senate Report No. 105 of the Committee on Labor and Public Welfare to accompany S. 1126, 80th Congress, 1st Session.

would be deprived of a fundamental right guaranteed in the Act.

For these additional reasons I conclude that a demand to negotiate such an agreement is an unlawful demand not contemplated by the Act as a mandatory subject of collective bargaining.

I therefore join Chairman Leedom and Member Jenkins in dismissing the complaint herein in is entirety.

Dated, Washington, D. C.

Arthur A. Kimball, Member National Labor Relations Board

[fol. 41] PHILIP RAY RODGERS and JOHN H. FANNING, Members, dissenting:

This case comes to the Board upon a complaint alleging that the Respondent Company violated Section 8(a)(1) and (5) by refusing to bargain with the Union concerning a proposed contractual provision, commonly referred to as an "agency shop" or "support money" clause.[33] The proposed clause would require, as a condition of employment, that all non-Union-member employees of Respondent working in the State of Indiana pay to the Union, 30 days after the date of their initial employment or the execution of the clause, a sum of money equivalent to the regular Union dues and fees. In dismissing the complaint, our colleagues have determinned that the proposed agency shop provision, if adopted, would violate the Act. We disagree.[34]

To reach the ultimate issue, i.e., whether Respondent violated Section 8(a)(5), the Board must first determine

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[33] See *Public Service Company of Colorado*, 89 NLRB 418, 422 at n. 17; *American Seating Co.*, 98 NLRB 800, 802.

[34] The collective position of our colleagues presents us with 3 separate and disparate opinions, and indeed, we think, within each opinion different and inherently conflicting rationales. We believe, therefore, it will better serve the purpose of clarity to address ourselves in the main to a positive exposition of our findings on the legal issue, and limit our comments on the varied theories and authorities of the majority.

whether *any* agency shop provision could be considered as lawful under the Act.[35] This determination would be dispositive of the case since if any such agreement is lawful [fol. 42] it concededly would fall into the category of mandatory subjects as to which the Respondent could be compelled to bargain.

Before approaching the problem of the legality of an agency shop agreement, two factors merit emphasis as they are both indispensable to a proper solution of the problem posed.

First, all parties to this proceeding are in agreement that the Board is to decide this case under the Federal Act, applying Federal law, and without resorting to the law of any State. No party has proceeded on the ground that the proposed agency shop agreement would violate Indiana's "right-to-work" law.[36] And Respondent predicated its re-

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[35] The issue of the propriety of an agency shop as a subject of bargaining has come to the Board upon a stipulated record. In our opinion, the Board's primary obligation is to decide this specific case involving a specific set of facts and based on the specific arguments which counsel has directed to our attention. Among other things, we cannot conclude on this stipulated record that a bargaining impasse ensued from Respondent's refusal to negotiate on the proposed agency shop; nor do we find that Respondent's good faith belief that an agency shop is unlawful under the Federal Act would constitute a defense if in fact it is not unlawful.

[36] In the recent case of *Meade Electric Co. v. Hagberg*, 159 N. E. 2d 408, 44 LRRM 2312 (1959), the Indiana Appellate Court construed the Indiana "right-to-work" statute as not prohibiting an "agency shop" provision substantially similar to the clause proposed by the Union in the instant proceeding. It is significant to note that the Indiana statute is couched in terms of "membership" and "nonmembership" and, like the Federal Act (Section 7), grants to employees the right to assist or refrain from assisting a labor organization. And see, e. g., *Schernerhorn v. Local 1625, Retail Clerks*, 47 LRRM 2300 (Dec. 23, 1960), where a Florida court handed down a similar ruling under the Florida "right-to-work" law.

fusal to bargain with the Union on the belief that the proposed agency shop clause was unlawful without reference to Indiana law.[37] Consequently, the Board is not required to treat the question in issue as involving anything other than the Federal Act, without reference to the limitation set forth in Section 14(b). Thus neither Section 14(b) relating to the withdrawal of the Federal Act where State law prohibits the "execution or application of agreements requiring membership in a labor organization as a condi-[fol. 43] tion of employment", nor in particular the "right-to-work" statute of Indiana or any other State need be reached in this case.[38]

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[37] In its reply brief, the Respondent stated:

> No one, much less the Respondent, is here contending that an "agency shop" arrangement such as has been proposed by the UAW is illegal under Indiana law. The legality of "agency shop" agreements under Indiana law is not in dispute in this proceeding.

[38] Notwithstanding that on the stipulated record the source of the governing law is to be Federal in nature, Chairman Leedom (whose rationale Member Kimball apparently adopts) has proceeded to construe State law.

Thus, for example, he attempts to distinguish the *Public Service* and *American Seating* cases on the ground that "no legal impediment existed to preclude the parties from entering into a contract requiring all employees to be union members." The "legal impediment" to which he impliedly alludes as existing in the instant case is the Indiana "right-to-work" law. The Chairman flatly states that the proposed agency shop is unlawful in Indiana, despite the judicial holding in Indiana to the contrary. In effect he would automatically forbid the agency shop, and we suppose all forms of union security, in any "right-to-work" jurisdiction purely on the basis of that label,—implying that the "right-to-work" laws in all States must be regarded as identical and that not even the State will be allowed to say otherwise.

Unlike our colleagues, we do not think it is the Board's province to undermine a State court decision interpreting a State statute. Especially is this so in this case where the Indiana Appellate Court has already rendered a formal

Second, there is no suggestion made anywhere in this proceeding that membership in the Union is not available to any non-member employee who wishes to join.[39] Everyone concedes that the Union was not seeking to bargain over a clause requiring non-member employees to pay sums equal to dues and fees as a condition of employment while at the same time maintaining a closed union policy with respect to applicants for membership.[40] Accordingly, the question of the legality of an agency shop provision must be viewed as contemplating an arrangement in which, while [fol. 44] employment is conditioned upon payment of the equivalent of dues and fees, all employees are *given the option* of becoming, or refraining from becoming, members of the Union.[41]

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decision as to the construction of the Indiana statute. *Algoma Plywood & Veneer Co. v. W. E. R. B.*, 336 U. S. 301, 307-14 (1948).

[39] The record and briefs in the case affirmatively indicate the availability of membership to the Indiana employees. In their bargaining with respect to the agency shop proposal, the parties could, of course, agree to insert in a contract that membership would be available but not required.

[40] Since the question of the extent to which a closed union policy might affect the legality of an agency shop agreement is not an issue in this case, we find it unnecessary to reach that question.

[41] We note that all our colleagues, and Member Kimball in particular, have placed great stress upon the testimony of Woodcock, the Union's vice-president, which they construe as evidence of the fact that non-member employees, who would be required to pay the equivalent of union dues and fees, would be deprived of certain benefits which members would acquire solely by virtue of their membership and as a matter of right. As reflected in the record, every question asked of Woodcock was with reference to the Union's *constitution* (and not with respect to the Union's agency-shop proposal). Woodcock responded that there were no provisions in the *constitution* which expressly set forth the rights of *non-members* to participate in *union* meetings, in *union* strike funds, to receive the *union* magazine, etc. But Woodcock also testified repeatedly that

In light of both these factors, there is no doubt in our mind that an agency shop agreement is a permissible form of union-security within the meaning of Sections 7 and

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despite the absence of express provisions dealing with *non-union* members' rights in the Union's constitution, the custom and practice of the Union, as deemed by it to be consistent with the constitution, is to grant all the rights accorded to members to non-members as well, if the non-members pay sums equal to dues and fees. Thus, Woodcock testified that the benfits afforded to members by the constitution are denied to those employees who "are non-members in the sense of non-paying to any extent." But, to those who pay the equivalent of dues and fees, they are *placed on the Union's rolls* and "they are entitled to the same benefits as a member unless they themselves choose not to make them available to them."

It is the statutory duty of the exclusive bargaining agent to represent equally all employees in the unit, union members and non-members alike. *Hughes Tool Co.*, 104 NLRB 318. There can be no dispute that the duty is legally fulfilled, for example, where under a concededly valid union shop or maintenance of membership contract employees refrain from joining the union and are denied the intra-union organizational benefits afforded to members. Nor in the maintenance of membership situation would the fact that non-members are not required to pay dues detract from the nondiscrimination and equal treatment to which they are entitled under the Act. The statute sanctions the enforceable collection of dues and fees from *members* pursuant to a valid union security contract plainly because Congress has vested in the majority union the *obligation* of statutory bargaining representative, and not on account of the internal organizational benefits, e. g., fraternal, which the members receive. Nonmembers in the unit must be accorded the same representation service, pertaining to wages, hours and work conditions with the employer, and the statutory sanction for financial support of such service derives from the same source. This is reinforced by the Congresssional purpose, as conceded, of eliminating "free riders." The amount of the charges to the non-members is justified on the basis of a reasonable general classification. *The Electric Auto Lite Co.*, 92 NLRB 1073, 1077.

8(a)(3) of the Act. We are impelled by what we believe is the clear intention of the Congress as expressed in Section 8(a)(3) of the Act, in the legislative history of the [fol. 45] Wagner [42] and Taft-Hartley [43] Acts, and by the Board and court decisions in which that Section has been construed. Our colleagues, on the other hand, by apparently holding, *inter alia*, that an agency shop is permitted only as an alternative to, or waiver of a valid union shop or

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[42] E. g., "The Bill does nothing to facilitate closed shop agreements or to make them legal in any State where they may be illegal. It does not interfere with the *status quo* on this debatable subject but *leaves the way open to such agreements as might now be legally consummated.* • • •." (Emphasis added.) S. Rep. No. 573, 74th Cong., 1st Sess., p. 11. That various forms and degrees of union security contracts were then extant and permitted in many States was well known to Congress and, in particular, to the Board in its consideration of the *Public Service* case.

[43] E. g., Senator Taft in explaining the Section 8(a)(3) provisos: "• • • while I think of it, I should like to say that *the rule adopted by the [Conference] committee is substantially the rule now in effect in Canada.* Apparently by a decision of the justices of the Supreme Court of Canada in an arbitration case, the present rule in Canada is that there can be a closed shop or union shop, and the union does not have to admit an employee who applied for membership, but the employee must nevertheless, pay dues, even though he does not join the union. *If he pays the dues without joining the union, he has the right to be employed.*" • • • (Emphasis added.) 93 Cong. Rec. 5088, May 9, 1947. While, not controlling of the legal issue, we note that, in a recent Bureau of National Affairs survey of 400 representative contracts, *6 percent contained agency shop clauses.* 46 LRR 458, October 17, 1960; that, as appeared in the oral argument herein, in the 10 years since *Public Service* was decided the General Counsel has been dismissing charges alleging agency shop contracts as unlawful, and contracts have been written involving large numbers of employees in reliance upon the Board's holdings.

[fol. 46] maintenance of membership provision,[44] have taken a novel approach which not only ignores the clear legislative history and indeed the terms of the Act itself, but which also runs completely contrary to well-established precedent.[45]

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[44] We are assuming this much because of statements made to such effect in the majority opinions, although elements of the rationale in each of the various opinions appear to us to cast doubt on the validity of the agency shop under any circumstances. In the majority opinions, and particularly in Chairman Leedom's concurrence, the argument is made that under the Federal Act the only permissible type of union security agreement is one which conditions employment upon union "membership." Thus, the majority reasons, where "membership" can be required, there is nothing under the Federal Act precluding the parties from negotiating away a "membership" requirement and imposing in lieu thereof some lesser form of union security (as, for example, an agency shop).

The fallaciousness of this position is self evident. For obviously, if the provisos to Section 8(a)(3) only permit agreements requiring "membership", then by a parity of reasoning all agreements requiring less than "membership", whether or not they are rationalized as a "waiver" or "alternative" to a permissible membership requirement, would have to be considered unlawful. If parties can waive where they are allowed a "membership" requirement, logically they can accomplish the same result absent such allowance so far as the discrimination and interference provisions of the Act are concerned. It is inconceivable to us that Congress had such an unrealistic and meaningless purpose as advanced by our colleagues.

[45] Member Jenkins' opinion concludes that an agency shop agreement is unlawful because it "can have no other foreseeable consequence than tending to encourage membership in UAW or discourage membership in any other union." Chairman Leedom and, presumably, Member Kimball are in agreement with this conclusion. Of course all forms of union security, including the agency shop, naturally have such tendency or effect. But if the agency shop is within

The basic problem, simply stated, is whether this form of union security, the agency shop, is, and was intended by Congress to be, embraced within the Section 8(a)(3) proviso. The question is clearly answered in the precedents, e.g., *Public Service*, *American Seating*, *Union Starch*, and *Radio Officers*.

The unanimous Board in *Public Service*, after oral argument, rendered a careful and comprehensive opinion on all [fol. 47] pertinent aspects—including the legislative history and technical questions of statutory construction—of essentially the same problem under the Wagner Act.[46] The Board ruled that the Section 8(a)(3) proviso, which specifically allows a "membership" requirement in a contract, was intended to be "permissive and not exclusive in character;" that it merely sets the *maximum* limits of union security which may be negotiated; and that the *lesser* forms of union security, e. g., an agency shop, were clearly permitted. We believe the case is manifestly sound. During the Taft-Hartley period, the Board in *American Seating* expressly reaffirmed the holding in *Public Service*, stating:

> "As the precise language of the 8(3) proviso in the Wagner Act was continued in the amended Act * * *, and because the legislative history of the amended Act indicates that Congress intended not to illegalize the practice of obtaining *support payments from nonunion members who would otherwise be 'free riders,'* we find that the provision for support payments in the instant contract does not exceed the union-security agreements authorized by the Act." 98 NLRB 800, 802 (1952). (Emphasis added.)

Indeed, on the bare face of it, it would seem wholly unreasonable that Congress would require that the union obtain a concession from the employer only in the *maxi-*

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the exemption of the Section 8(a)(3) proviso, as we believe it clearly is, this conclusion of our colleagues is a non sequitur.

[46] The case was decided after Taft-Hartley became effective with full knowledge by the Board of the provisions and policy of the later statute.

mum degrees of union security.[47] Our colleagues seek to [fol. 48] distinguish, limit, and in effect overrule these cases on narrow and reaching grounds.[48] But the *bases of decision* in these cases are unmistakably stated therein and directly affect and control the legal issue here involved.[49]

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[47] In the provisos to both Sections 8(3) of the Wagner Act and 8(a)(3) of the Taft-Hartley Act, the public policy is stated: "That nothing in this Act, *or in any other statute of the United States*, shall preclude an employer from making [such] an agreement * * *." (Emphasis added.) See *Algoma Plywood & Veneer Co. v. W. E. R. B.*, 336 U. S. 301. In making this statement of policy, did Congress intend to place upon the described *form* of union security provision as to which it was thus proclaiming immunity from all its laws, a technical restriction, to-wit, that it *must* contain a "membership" requirement?

[48] For example, Member Jenkins first sets forth the issues which are *not* involved in this proceeding, then he proceeds to dissect the statute by reading Section 8(a)(3) "without reference to any proviso," and finally he attempts to sweep away the previously referred to cases on the grounds of irrelevancy. It is of course fundamental statutory construction that effect must be given to all provisions of a statute. In particular, Section 8(a)(3) cannot be read except in its entirety, with the provisos being an inextricable part as they serve to define and clarify the purport of the whole section. As will be further shown, these precedents are quite relevant and should not be lightly treated where to do so would overturn basic and soundly considered principles as to the meaning of pertinent statutory provisions, including Section 8(a)(3) *and its provisos*. See also the Chairman's basis for distinguishing *American Seating* and *Public Service*, *supra*, note 38.

[49] An interesting fact to be noted in the *Public Service* case (at p. 419) is that after executing the "support money" clause, the employer sent a letter to the employees in which it explained that, while it would not agree to the union's proposal for a union shop because "there were employees who for their own personal reasons would not care to join the Union," the employer agreed to the alternative agency shop clause to promote more harmony among the employees.

As is quite evident, the majority is in error in ignoring the *Union Starch* and *Radio Officers* cases or brushing them aside as irrelevant.

The *Union Starch* construction of Section 8(a)(3)[50] has been an accepted and settled rule in many Board and court [fol. 49] cases. In those cases, even where "membership" is specifically required in a valid union security contract, for all practical purposes the union cannot enforce the actual membership requirement but can obtain at most the periodic dues and initiation fees. Thus, a contract, such as the agency shop, which requires only that which the union under the Act can realistically and effectively enforce, must in all reason and equity be held lawful. (An agency shop does not require literal membership; *nor does a union shop.*) Otherwise, if the majority view is taken, the union should be permitted to enforce a union shop requirement for literal membership, regardless of the nature of the union, its constitution and by laws, and the particular application of the Section 8(b)(1)(A) proviso.[51] Surely, our colleagues are aware that to enforce such literal membership would run counter to the fundamental precepts and

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[50] In *Union Starch & Refining Company*, 87 NLRB 779, enf'd 186 F. 2d 1008 (7th Cir. 1951), cert. denied 342 U. S. 815 (and cited approvingly by the Supreme Court in *Radio Officers'*) the Board said: "We therefore read proviso (B) as extending protecton to any employee who tenders periodic dues and initiation fees without being accorded membership. If the union imposes any other qualifications and conditions for membership with which he is unwilling to comply, such an employee may not be entitled to membership, but he is entitled to keep his job". (At p. 784.) And see 87 NLRB at 781, note 8, where the Board said: "The provisos of Section 8 (a) (3) are specifically limited to protecting *nonmembers* of the contracting union, and cannot be converted into statements of the conditions which entitle an employee to membership rather than those which entitle him, as a nonmember, to keep his job."

[51] Which provides that the guarantee of employee rights in Section 7 "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

philosophy of Taft-Hartley in protecting the rights and freedom of choice of employees *vis a vis* union membership.

In the *Radio Officers'* case,[52] the Supreme Court recognized:

> Lengthy legislative debate preceded the 1947 amendments to the Act which thus limited permissible employer discrimination. *This legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. Thus Congress recognized the validity of unions' concern about 'free riders,'* i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and *gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason.* (Emphasis added.)

[fol. 50] In consequence of the foregoing, the Court concluded that Congress intended to accord to employees the right "to join unions, be good, bad, or indifferent members, or *abstain from joining any union without imperiling their livelihood.*"

Certainly the Supreme Court clarified that which Congress sought to permit in the area of union security and that which it sought to limit. While Section 8(a)(3) is couched in terms of "membership", the Court noted that the term had been "too restrictively interpreted" (by the Eighth Circuit). The Court provided a construction of that term, and the whole Section in keeping with the basic policy of the amended Act, namely, "*to insulate employees' jobs from their organizational rights*".[53] By such a reading, the Court gave effect to the main thrust of the entire Section, which is to protect employees in their hire or tenure of employment; and this was accomplished by equating the word "membership" with the status or right to be protected from being discharged—a status which could not be inter-

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[52] *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17, 40-41 (1954).

[53] 347 U. S. at 40.

fered with so long as the employee tendered the requisite periodic dues and fees. Conversely, "non-membership" was equated to a status which resulted only from a failure to tender such dues and fees, and which rendered the delinquent "non-member" employee subject to being discharged.[54]

In view of the foregoing, we are unable to see how our colleagues can distinguish the instant agency shop proposal from any other union security proposal which predicates a right of discharge *only* upon an employee's failure to tender the equivalent of regular union dues and initiation fees. The Union sought to bargain concerning a clause which would leave the final decision as to membership or non-membership with each individual employee, *at his option*, [fol. 51] but nevertheless, to condition employment upon the payment of sums of money which would constitute each employee's "share of financial support". In our opinion, such a proposal fully comports with the Congressional intention in Section 8(a)(3) for the allowance of unions security contracts, and, therefore, is a mandatory subject as to which the Respondent is obliged to bargain.

Consequently, we would find that the Respondent violated Section 8(a) (1) and (5) of the Act, as alleged.[55]

Dated, Washington, D. C.

Philip Ray Rodgers, Member, John H. Fanning, Member National Labor Relations Board

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[54] As stated by Senator Taft, "*In other words, what we do, in effect, is to say that no one can get a free ride in such a shop* • • • The employee has to *pay the union dues.*" (Emphasis added.) 93 Cong. Rec. 3953, April 23, 1947.

[55] It is beyond the Board's authority to tell the parties what specific result they should reach in bargaining. *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395 (1952). Accordingly, by concluding that the proposed agency shop agreement is a lawful and mandatory subject for bargaining, we would not impose a duty upon the Respondent to execute such an agency shop clause, or any other clause; the duty imposed would go no further than to direct the Respondent, upon request, to bargain in good faith.

[fol. 52] BEFORE THE NATIONAL LABOR RELATIONS BOARD

133 NLRB No. 21 D-2305 Indiana

Case No. 7-CA-2560

GENERAL MOTORS CORPORATION AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO

SUPPLEMENTAL DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD—September 29, 1961

On February 20, 1961, the National Labor Relations Board (Members Rodgers and Fanning dissenting) issued a Decision and Order in the above-entitled case (130 NLRB No. 54), dismissing the entire complaint, as amended, which alleged, in substance, that the Respondent, herein called GM, refused to bargain with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, herein called UAW, concerning terms of an agreement supplementary to an existing agreement between the parties. Thereafter, the General Counsel and the UAW, the charging party, filed motions for reconsideration and briefs in support. Briefs in support of the motions were also filed by the Retail Clerks International Association, AFL-CIO; the AFL-CIO; Commercial Telegraphers' Union, AFL-CIO; United Steel Workers of America, AFL-CIO; and Indiana State Building and Construction Trades Council. UAW, Commercial Telegraphers' Union, and Indiana State Building and Construction Trades Council also requested oral argument in connection with the motions for reconsideration. GM and [fol. 53] the Intervenor[1] filed briefs in opposition to the motions. As the record, including the exceptions and briefs, adequately present the issues and positions of the parties, the requests for oral argument in connection with the motions for reconsideration are hereby denied. We hereby

[1] The Intervenor is a group of GM employees in the appropriate unit who are opposed to the UAW's proposed supplemental agreement.

grant the motions for reconsideration and vacate our previous Decision and Order in this case, except for the formal parts consisting of the procedural aspects of the case, and the findings as to the business of the Respondent and as to the labor organization involved.

The Refusal to Bargain

By letter of October 20, 1959, UAW requested GM to bargain concerning a proposed supplementary agreement to their existing national agreement [2] under which the nonmember employees represented by UAW in GM's nine plants in six Indiana cities (Anderson, Bedford, Kokomo, Indianapolis, Marion and Muncie) [3] and new employees hired thereafter would be required as a condition of continued employment after 30 days following the date of such [fol. 54] supplementary agreement or of their initial employment (whichever is later) to pay to the UAW a sum equal to the initiation fee charged by each of its local unions involved and a monthly sum equal to the regular dues required of union members at each location.

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[2] The national agreement, dated October 2, 1958, and effective until August 31, 1961, and thereafter from year to year, provides for maintenance of membership and a union shop, except as follows:

> "(4b) Anything herein to the contrary notwithstanding, an employee shall not be required to become a member of, or continue membership in, the union, as a condition of employment, if employed in any state which prohibits, or otherwise makes unlawful, membership in a labor organization as a condition of employment."

[3] The UAW's letter referred to "five" Indiana plants. However, it appears from the record that the plants involved in this proceeding are the Chevrolet Motor Division and the Allison Division in Indianapolis, the Delco Radio Division in Kokomo, the Fabricast Division in Bedford, the Battery Operations and the Delco-Remy Division in Muncie, the Delco-Remy Division and the Guide Lamp Division in Anderson, and the Fisher Body Division in Marion.

By letter, dated October 27, 1959, GM answered, stating that, as an "agency shop arrangement * * * as * * * detailed in your letter of October 20, 1959, would violate the National Labor Relations Act, as amended, if incorporated in a collective bargaining agreement, we respectfully decline to comply with your request * * *"

The foregoing exchange of correspondence took place after a decision on June 19, 1959, by the Indiana Appellate Court, holding that an agency shop under which nonunion members are required, as a condition of employment, to pay the exclusive bargaining agent a fee, in the equivalent of dues, initiation fees and assessments paid by union members, was a legal union-security arrangement in the State of Indiana notwithstanding Indiana's Right-to-Work Law.[4] The court reasoned that Indiana's Right-to-Work Law, unlike right-to-work statutes of other jurisdictions which spe-
[fol. 55] cifically prohibit or restrict agency-shop arrange-

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[4] The Right-to-Work Law of the State of Indiana, the place of employment of the employees involved herein, provides in pertinent part (Burn's Ind. Statutes, Ann. Sec. 40-2703 C. P. S., Acts of 1957, Ch. 19, Sec. 3):

> No corporation or individual or association or labor organization shall solicit, enter into or extend any contract, agreement or understanding written or oral, to exclude from employment any person by reason of membership or nonmembership in a labor organization, to discharge or suspend from employment or layoff any person by reason of his refusal to join a labor organization * * * Any such contract, agreement, or understanding, written or oral, entered into or extended after the effective date of this Act, shall be null and void and of no force or effect. * * *

Section 14 (b) of the National Labor Relations Act provides:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

ments, only forbids arrangements requiring union membership, and, as an agency-shop does not require union membership, the Indiana statute did not apply to an agency-shop arrangement.[5]

Apart from the issue concerning the legality of the agency-shop arrangement, all facts necessary for proof of a Section 8(a) (5) violation are either stipulated or conceded. The Respondent admits that the UAW has been and now is the exclusive collective bargaining representative for all production and maintenance employees and mechanical employees in engineering department shops in the plants or facilities of the Respondent covered by the national agreement between the UAW and GM, dated October 2, 1958, including employees at the Respondent's aforementioned Indiana plant locations, and that the UAW services the employees whom it represents at each of these plants through its local unions. The parties stipulated that, for the purposes of this case, they do not "intend to raise or rely" upon a provision in the national agreement which purports in broad terms to preclude any requirement of further bargaining during the term of the agreement. The parties are in agreement that, if UAW's proposal is lawful, the subject matter of the proposal constituted a mandatory subject for collective bargaining and that GM's refusal to bargain with respect to it would violate Section 8(a) (5); but that, if UAW's proposal is unlawful, GM had no legal obligation to bargain as to it.

Thus, the ultimate issue to be determined is whether UAW's proposal for an agency-shop arrangement to cover GM employees employed in the State of Indiana is a lawful proposal under the National Labor Relations Act, as amended.

[fol. 56] GM contends that UAW's proposed agency-shop clause is illegal under the provisions of Section 7, Section 8(a) (1), and Section 8(a) (3).[6] More specifically, GM con-

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[5] *Meade Electric Company v. Hagberg*, 159 N. E. 2d 408 (1959), 44 LRRM 2312. Cf. *Higgins v. Cardinal Mfg. Co.*, 188 Kan. 11, 360 P. 2d 456, 463.

[6] Section 7 of the Act provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain

tends that the exercise of rights of employees under Section 7 of the Act, as amended in 1947, and particularly the right

> collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3).

Sections 8(a) (1) and 8(a) (3), in relevant part, provide that: it shall be an unfair labor practice for an employer—

> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; • • •
>
> (3) by discrimination in rgard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made • • • Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; • • •

to refrain from assisting a labor organization, is limited only by agreements requiring union membership as authorized in Section 8(a) (3). GM asserts that, because an agency-shop requires non-union employees to contribute financial support to a labor organization and because, for the reasons hereinafter set forth, an agency-shop arrangement does not meet the requirements of Section 8(a) (3), an agency-shop arrangement, if adopted, would interfere with the exercise of rights guaranteed in Section 7, and would therefore constitute a violation of Section 8(a) (1).

GM further contends that the first proviso to Section 8(a) (3) spells out the only type of agreement, i.e., an agreement limited to conditioning continued employment upon membership in a labor organization, that may permissibly infringe upon rights guaranteed in Section 7 and not ex-
[fol. 57] pose an employer to a violation of Section 8(a) (3). GM asserts that the first proviso to Section 8(a) (3) makes clear that to condition employment on anything other than membership in a labor organization is contrary to the statute. Finally, GM contends that, as UAW's proposal fails to meet the requirements of the first proviso to Section 8(a) (3), its proposal would afford GM no protection from the sweep of the basic no-discrimination provision of Section 8(a) (3) were it to enforce an agency-shop agreement against employees who refuse to pay support money, and thus the proposal is illegal.

On the other hand, the General Counsel and the UAW contend in substance that the first proviso to Section 8(a) (3) merely defines the outer limits of permissible union-security provisions and that the proviso encompasses within its scope lesser forms of union-security arrangements, including the agency shop which requires only the payment of the equivalent of dues and initiation fees but does not compel membership in a labor organization.

Before approaching the problem of the legality of an agency shop agreement, two factors merit emphasis as they are both indispensable to a proper solution of the problem posed.

[fol. 58] First, all parties to the proceeding are in agreement that the Board decide this case under the Federal Act, applying Federal law, and without resorting to the law of any State. No party has proceeded on the ground that

the proposed agency shop agreement would violate Indiana's "right-to-work" law.[7] And the Respondent predicated its refusal to bargain with the Union on the belief that the proposed agency shop clause was unlawful without reference to Indiana law.[8] Thus, as the issue is framed by the parties, neither Section 14(b), relating to the withdrawal of the Federal Act where State law prohibits the "execution or application of agreements requiring membership in a labor organization as a condition of employment," nor in particular the "right-to-work" statute of Indiana or any other State need be reached in this case.[9]

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[7] In *Meade Electric Co. v. Hagberg, supra*, the Indiana Appellate Court construed the Indiana "right-to-work" statute as not prohibiting an "agency shop" provision substantially similar to the clause proposed by the Union in the instant proceeding. It is significant to note that the Indiana statute is couched in terms of "membership" and "nonmembership" and, like the Federal Act (Section 7), grants to employees the right to assist or refrain from assisting a labor organization. And see, e. g., *Schernerhorn v. Local 1625, Retail Clerks*, 47 LRRM 2300 (Dec. 23, 1960), where a Florida court handed down a similar ruling under the Florida "right-to-work" law.

[8] In its reply brief, the Respondent stated:

> No one, much less the Respondent, is here contending that an "agency shop" arrangement such as has been proposed by the UAW is illegal under Indiana law. The legality of "agency shop" agreements under Indiana law is not in dispute in this proceeding.

[9] Notwithstanding that on the stipulated record the source of the governing law is to be Federal in nature, our dissenting colleague has proceeded to construe State law. Thus, for example, he attempts to distinguish the *Public Service* and *American Seating* cases, cited *infra*, on the ground that in those cases "no legal impediment existed to preclude the parties from entering into a contract requiring all employees to be union members." The "legal impediment" to which he impliedly alludes as existing in the instant case is the Indiana "right-to-work" law. He states that the proposed agency shop is unlawful in In-

[fol. 59] Second, there is no suggestion made anywhere in this proceeding that membership in the Union is not available to any nonmember employee who wishes to join.[10] Everyone concedes that the Union was not seeking to bargain over a clause requiring nonmember employees to pay sums equal to dues and fees as a condition of employment while at the same time maintaining a closed-union policy with respect to applicants for membership.[11] Accordingly, the question of the legality of an agency-shop provision here must be viewed as contemplating an arrangement in which, while employment is conditioned upon payment of the

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diana, despite the judicial holding in Indiana to the contrary. In effect, he would automatically forbid the agency shop, and we suppose all forms of union security, in any "right-to-work" jurisdiction purely on the basis of that label,—implying that the "right-to-work" laws in all States must be regarded as identical and that not even the State will be allowed to say otherwise. We do not think it is the Board's province to undermine a State court decision interpreting a State statute, such as in this case where the Indiana Appellate Court has already rendered a formal decision as to the construction of the Indiana statute. *Algoma Plywood & Veneer Co. v. W. E. R. B.*, 336 U. S. 301, 307-14 (1948).

[10] The record and briefs in the case affirmatively indicate the availability of membership to the Indiana employees. Indeed Section 4(c) of the existing national agreement requires the Union "to accept into membership each employee covered by this agreement who renders to the Union the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership in the Union." The Union's agency shop proposal specifically provided that Indiana employees would have an opportunity to become union members. In their bargaining with respect to the agency shop proposal, the parties could, of course, agree to insert in a contract that membership would be available but not required.

[11] Since the question of the extent to which a closed-union policy might affect the legality of an agency-shop agreement is not an issue in this case, we find it unnecessary to reach that question.

[fol. 60] equivalent of dues and fees, all employees are *given the option* of becoming, or refraining from becoming, members of the Union.[12]

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[12] There is no basis for the position, derived from testimony of Woodcock, the Union's vice-president, that nonmember employees, who would be required to pay the equivalent of union dues and fees, would be deprived of certain benefits which members would acquire solely by virtue of their membership and as a matter of right. As reflected in the record, every question asked of Woodcock was with reference to the Union's *constitution* (and not with respect to the Union's agency-shop proposal). Woodcock responded that there were no provisions in the constitution which expressly set forth the rights of nonmembers to participate in *union* meetings, in *union* strike funds, to receive the *union* magazine, etc. But Woodcock also testified repeatedly that, despite the absence of express provisions dealing with *nonunion* members' rights in the Union's constitution, the custom and practice of the Union, as deemed by it to be consistent with the constitution, is to grant all the rights accorded to members to nonmembers as well, if the nonmembers pay sums equal to dues and fees. Thus, Woodcock testified that the benefits afforded to members by the constitution are denied to those employees who "are nonmembers in the sense of nonpaying to any extent." But, to those who pay the equivalent of dues and fees, they are *placed on the Union's rolls* and "they are entitled to the same benefits as a member unless they themselves choose not to make them available to them."

It is the statutory duty of the exclusive bargaining agent to represent equally all employees in the unit, union members and nonmembers alike. *Steele v. Louisville & N. R. Co.*, 323 U. S. 192; *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U. S. 210; *Hughes Tool Co.*, 104 NLRB 318. There can be no dispute that the duty is legally fulfilled, for example, where under a concededly valid maintenance of membership contract employees refrain from joining the union and are denied the intra-union organizational benefits afforded to members. Nor in the maintenance of membership situation would the fact that non-members are no required to pay dues detract from the nondiscrimination and

[6] In the light of both these factors, we have no d bt that an agency-shop agreement is a permissible form n security within the meaning of Sections 7 and (3) of the Act. We are impelled by what we believe clear intention of the Congress as expressed in Section (3) of the Act, in the legislative history of the Wag- and Taft-Hartley [14] Acts, and by the Board and court de ons in which that Section has been construed.

he sic problem, simply stated, is whether this form

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al treatment to which they are entitled under the Act. statute sanctions the enforceable collection of dues and rom *members* pursuant to a valid union-security con- because Congress has vested in the majority union obligation of statutory bargaining representative, and on account of the internal organizational benefits, e. g., rnal, which the members receive. Non-members in it must be accorded the same representation service pertaining to wages, hours and work conditions with the oyer, and the statutory sanction for financial support uch service derives from the same source. This is nforced by the Congressional purpose, as conceded, of minating "free riders." The amount of the charges to non-members is justified on the basis of a reasonable neral classification. *The Electric Auto Lite Co.*, 92 NLRB 1077, enf'd 196 F. 2d 500 (C. A. 6), cert. denied 344 U. S. 823.

[13] E.g., "The Bill does nothing to facilitate closed shop agreements or to make them legal in any State where they may be illegal. It does not interfere with the status quo on this debatable subject but *leaves the way open to such agreements as might now be legally consummated* • • •." (Emphasis added.) S. Rep. No. 573, 74th Cong., 1st Sess., p. 11. That various forms and degrees of union-security contracts were then extant and permitted in many States was well known to Congress and, in particular, to the Board in its consideration of the *Public Service* case, *infra*.

[14] E. g., Senator Taft, in explaining the Section 8(a) (3) provisos: "• • • while I think of it, I should like to say *the rule adopted by the* [Conference] committee is substantially the rule now in effect in Canada. Apparently by a decision of the justices of the Supreme Court of Canada in an arbitration case, the present rule in Canada is that there can be a closed shop or union shop, and the union does not have

of union-security, the agency-shop, is, and was intended by Congress to be, embraced within the Section 8(a) (3) proviso. The question is answered in the precedents, e.g., *Pub-*
[fol. 62] *lic Service*,[13] *American Seating*,[16] *Union Starch*,[17] and *Radio Officers*.[18]

The unanimous Board in *Public Service*, rendered a comprehensive opinion on all pertinent aspects, including the legislative history and technical questions of statutory construction, of essentially the same problem under the Wagner Act.[19] The Board ruled that the Section 8(3) proviso, which specifically allows a "membership" requirement in

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to admit an employee who applied for membership, but the employee must nevertheless, pay dues, even though he does not join the union. *If he pays the dues without joining the union, he has the right to be employed.*" * * * (Emphasis added.) 93 Cong. Rec. 5088, May 9, 1947. While not controlling of the legal issue, we note that, in a recent Bureau of National Affairs survey of 400 representative contracts, *6 percent contained agency-shop clauses*, (46 LRR 458, October 17, 1960); that, as appeared in the oral argument herein, in the 10 years since *Public Service* was decided the General Counsel has been dismissing charges alleging agency-shop contracts as unlawful, and that contracts have been written involving large numbers of employees in reliance upon the Board's holdings.

[15] *Public Service of Colorado*, 89 NLRB 418 (1950). An interesting fact to be noted in the *Public Service* case (at p. 419) is that after executing the "support money" clause, the employer sent a letter to the employees in which it explained that, while it would not agree to the union's proposal for a union shop because "there were employees who for their own personal reasons would not care to join the Union," the employer agreed to the alternative agency-shop clause to promote more harmony among the employees.

[16] *American Seating Co.*, 98 NLRB 800 (1952).

[17] *Union Starch & Refining Company*, 87 NLRB 779; 186 F. 2d 1008, 1011-1012 (C. A. 7, 1951), cert. den. 342 U. S. 815.

[18] *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17.

[19] The *Public Service* case was decided after Taft-Hartley became effective, with full knowledge by the Board of the provisions and policy of the later statute.

a contract, was intended to be "permissive and not exclusive in character;" that it merely set the *maximum* limits of union security which may be negotiated; and that *lesser* forms of union security, e.g., an agency shop, were clearly permitted. We believe the case is manifestly sound. During the Taft-Hartley period, the Board, in *American Seating*, expressly reaffirmed the holding in *Public Service*, stating:

> "As the precise language of the 8(3) proviso in the Wagner Act was continued in the amended Act with certain added qualifications not pertinent here, and because the legislative history of the amended Act indicates that Congress intended not to illegalize the practice of obtaining *support payments from nonunion* [fol. 63] *members who would otherwise be 'free riders,'* we find that the provision for support payments in the instant contract does not exceed the union-security agreements authorized by the Act." 98 NLRB 800, 802 (1952). (Emphasis added.) [20]

The *Union Starch* construction of Section 8(a) (3) has been an accepted and settled rule in a great many Board and court cases. In those cases, even where "membership" is specifically required in a valid union-security contract, the union in particular situations cannot enforce the actual membership requirement but can obtain at most the periodic dues and initiation fees. Thus, a contract, such as the agency shop, which requires only that which the union under the Act can realistically and effectively enforce as to

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[20] In the provisos to both Sections 8(3) of the Wagner Act and 8(a) (3) of the Taft-Hartley Act, the public policy is stated: "That nothing in this Act, *or in any other statute of the United States*, shall preclude an employer from making [such] an agreement * * *." (Emphasis added.) See *Algoma Plywood & Veneer Co. v. W. E. R. B.*, 336 U. S. 301. In making this statement of policy, did Congress intend to place upon the described form of union security provision as to which it was thus proclaiming immunity from all its laws, a technical restriction, to-wit, that it must contain a "membership" requirement and nothing else?

all employees in this case must in all reason and equity be held lawful.

In the *Radio Officers'* case,[21] the Supreme Court recognized that:

> Lengthy legislative debate preceded the 1947 amendments to the Act which thus limited permissible employer discrimination. *Thus legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. Thus Congress recognized the validity of unions' concern about 'free riders,'* i.e., employees who receive the benefits of union representation but are unwilling to [fol. 64] contribute their share of financial support to such union, and *gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason.* (Emphasis added.)

Certainly the Supreme Court clarified that which Congress sought to permit in the area of union security and that which it sought to limit. While Section 8(a) (3) is couched in terms of "membership," the Court noted that the term had been "too restrictively interpreted" (by the Eighth Circuit). The Supreme Court provided a construction of that term and the whole Section in keeping with the basic policy of the amended Act, namely, "*to insulate employees' jobs from their organizational rights.*"[22] By such a reading, the court gave effect to the main thrust of the entire Section, which is to protect employees in their hire or tenure of employment; and this was accomplished by qualifying the requirement of "membership" with the protection against discharge so long as the employee tendered the requisite periodic dues and fees.[23]

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[21] *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17, 40-41.

[22] 347 U. S. at 40.

[23] As stated by Senator Taft, "*In other words, what we do, in effect, is to say that no one can get a free ride in such a shop* • • • The employee *has to pay the union dues.*" (Emphasis added.) 93 Cong. Rec. 3953, April 23, 1947.

In view of the foregoing, we are unable to distinguish, so far as its legality is concerned, the instant agency shop proposal from any other union-security proposal which predicates a right of discharge *only* upon an employee's failure to tender the equivalent of regular union dues and initiation fees. The Union sought to bargain concerning a clause which would leave the final decision as to membership or nonmembership with each individual employee, *at his option*, but nevertheless, to condition employment upon the payment of sums of money which would constitute each employee's share of financial support. In our opinion, such a proposal fully comports with the Congressional intention [fol. 65] in Section 8(a) (3) for the allowance of union-security contracts; and, therefore, is a mandatory subject as to which the Respondent is obliged to bargain.

Consequently, having refused to bargain with respect to such proposal, we find that the Respondent violated Section 8(a) (1) and (5) of the Act, as alleged in the complaint as amended.[24]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent, occurring in connection with the Respondent's operations, have a close, intimate and substantial relationship to trade, traffic and commerce among the several States, and tend to lead to labor disputes obstructing commerce and the free flow of commerce.

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[24] It is beyond the Board's authority to tell the parties what specific result they should reach in bargaining. *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395 (1952). Accordingly, by concluding that the proposed agency-shop agreement is a lawful and mandatory subject for bargaining, we do not impose a duty upon the Respondent to execute such an agency-shop clause, or any other clause; the duty imposed goes no further than to direct the Respondent, upon request, to bargain in good faith thereon.

V. Conclusions of Law

Upon the foregoing findings of fact and upon the entire record, the Board makes the following conclusions of law:

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. All employees covered by the national agreement between GM and UAW, dated October 2, 1958, constitute a unit appropriate for the purposes of collective bargaining within the meanng of Secton 9(b) of the Act.

[fol. 66] 3. The above-named Union, on October 20, 1959, and at all times since, represented a majority of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act, and at all material times has been and now is the exclusive representative of said employees.

4. By refusing on October 27, 1959, and at all times thereafter, to bargain collectively with the above-named Union, as the exclusive representative of its employees in the aforesaid appropriate unit concerning the agency-shop proposal made by the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7, of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Order

Upon the entire record in this case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that

the Respondent, General Motors Corporation, Detroit Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, as the exclusive representative of all production and maintenance employees and mechanical employees in engineering department shops in the plants or facilities of the Respondent covered by the national agree-[fol. 67] ment between the UAW and GM, dated October 2, 1958, including the employees at the Respondent's plants in Anderson, Bedford, Kokomo, Indianapolis, Marion and Munice, Indiana, (1) concerning the terms of an agreement supplementary to the existing national agreement under which non-member employees in the bargaining unit at the aforesaid Indiana plants and new employees to be hired therein would be required as a condition of continued employment after 30 days following the date of such supplementary agreement or of their initial employment (whichever is later) to pay to the UAW a sum equal to the initiation fee charged by the local union involved and monthly sums equal to the regular dues required of UAW members at each location; or (2) concerning like or related agency-shop proposals.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act to bargain collectively through representatives of their own choosing.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization, as the exclusive representative of the employees in the aforesaid unit (1) with respect to the proposal of UAW to enter into an agreement, supplementing their national agreement,

to provide that employees represented by UAW in GM plants in Indiana and new employees hired at those plants thereafter would be required as a condition of continued employment after 30 days following the date of such supplementary agreement or of their initial employment (whichever is later) to pay to the UAW a sum equal to the iniation fee charged by the local union involved and monthly sums equal to the dues required of members at each location, and if an understanding is reached, embody such understanding in a [fol. 68] signed agreement; or (2) with respect to like or related proposals.

(b) Notify the Regional Director for the Seventh Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.[25]

Dated, Washington, D. C.

Frank W. McCulloch, Chairman, Philip Ray Rodgers, Member, John H. Fanning, Member, Gerald A. Brown, Member, National Labor Relations Board

(Seal.)

MEMBER LEEDOM, Dissenting:

For the reasons set forth hereinafter, I believe that the complaint should be dismissed. Even though the "agency shop" agreement has been held to be lawful under the law of Indiana, a "right-to-work" State, it is, in my opinion, unlawful under the National Labor Relations Act in such a State. I do not, as my colleagues assert, construe state law to interpret federal, but, rather confine myself strictly to the federal Act.

The record discloses that, under the agency shop pro-

[25] At the hearing, the parties stipulated that, in the event that the Board found that the Respondent violated Section 8(a) (5) of the Act, they "specifically waive any remedy requiring the posting of notices by Respondent." In accordance with the stipulation, we omit the usual remedy with respect to posting notices.

posed, non-members would not as a matter of right be eligible to participate in union meetings, to vote on ratifications of agreements, or to vote on how their "support money" was to be spent. They would not be entitled as a matter of right to receive the Union's publication, or strike benefits, to participate in the Union's educational fund, or [fol. 69] to have any of the other benefits guaranteed union members. Thus, although non-members would be required to pay to the UAW the equivalent of the initiation fee and dues paid by members, they could be denied benefits, available to members which would be available to them, without additional financial burden, if they became members. Moreover, even with respect to UAW practice, counsel for the UAW stated at oral argument that "probably a non-member [subject to the agency-shop provision] would not vote in the strike vote." In these circumstances, non-members would necessarily be encourged to become members. For, as the courts have held, the existence of discriminatory benefits, based on union membership, "is inherently conducive to increased union membership • • • by increasing the number of workers who would like to join and/or their quantum of desire,"—even though the Union would reject all applicants for membership.[26] If this is so when the union is closed, *a fortiori* is it so when, as here, the union is open. That the payment of money to a labor organization assists that organization is self-evident.

In my view, such a union-security agreement necessarily interferes with the Section 7 right of employees to refrain from assisting, and encourages membership in, a labor organization. It is, therefore, unlawful under Secton 8(a) (1) and (3) in any jurisdiction, unless it is saved by the proviso to Section 8(a) (3) of the Act. That proviso permits an employer to make an agreement with a labor organization "to require as a condition of employment *membership* (emphasis supplied) therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement whichever is later • • •" There is, however, no other provision of the Act which specifically legalizes the interference and encouragement inherent in

[26] *N. L. R. B. v. Gaynor News Co.*, 197 F. 2d 719, 722-723 (C. A. 2), affirmed 347 U. S. 17.

an agency-shop arrangement; and the only question here is whether such an arrangement can be lawful under the National Labor Relations Act in a State like Indiana, where [fol. 70] it is clear that an agreement requiring literal membership [27] is prohibited by state law. To hold the agency shop lawful, one would have to conclude that Congress intended the word "membership" in Section 7 and 8(a) (3) to encompass not only literal membership, but also other relationships between employees and the union, while at the same time intending that the same word in Section 14(b)[28] encompass only literal membership, or further, that Congress in-

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[27] By "literal membership" I mean the right of a union to require actual membership as a condition of employment, and a willingness to admit to membership all employees who tender the requisite initiation fees and dues; cf. *Union Starch & Refining Company*, 87 NLRB 779; *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17. Neither of these cases stands for the proposition that payment of initiation fees and dues can be required when literal membership cannot.

[28] Unlike my colleagues, who find that the terms of Section 14(b) "need not be reached," I find that such terms *must* be interpreted and reconciled with the comparable terms in the first proviso to Section 8(a) (3). There are a number of states which have "right-to-work" laws; not all of them are drawn in the same terms and not all have received the same interpretation by the competent state authorities. In holding that the proposal here is lawful under the Section 8(a) (3) proviso because the Indiana Court has held an agency shop to be valid under Indiana law, my colleagues are necessarily holding that they will follow State law in this area, whatever that law may be and however it may vary from State to State. Such a view, in my opinion, runs counter to the basic Congressional purpose of establishing a uniform national labor-management relations policy. Although Congress in enacting Section 14(b) departed from that policy in a limited area, to the extent of permitting the individual States to determine that the Section 8(a) (3) proviso would be wholly inapplicable, it did not in my view so far depart from that policy that the Section 8(a) (3) proviso could conceivably have a different meaning in each of the 50 States and the Territories.

tended the word "membership" to mean one thing in Indiana and a different thing somewhere else. Such reasoning I am not prepared to accept. Thus, the conclusion is inescapable that an agency-shop arrangement, whatever its status under Indiana law, cannot be lawful under the National Labor Relations Act in a state like Indiana where employment cannot lawfully be conditioned on literal membership. For as already pointed out, the agency shop clause, through the disparity of benefits provided as between union [fol. 71] members and non-members—all paying the same fees and dues—would permit the union and the employer inevitably to coerce the employees into joining the union. In this way, for all practical purposes, the very thing is achieved that the federal statutes guarantees shall not be required of employees in a "right-to-work" state quite as effectively as if the union contract expressly provided for union membership as a condition of continued employment. For who can say as a verity that a man forced to buy a cake will not eat it. It should not strain perspicacity to see here a classic example of a technique condemned by the law since ancient times under the principle "when anything is prohibited directly, it is also prohibited indirectly."

Moreover, in a "right-to-work" state where freedom not to join a union is guaranteed, it cannot be said that an employee submits to a "lesser" form of union security than membership, as the term *lesser* is used by my colleagues of the majority where, as here, there is exacted from him all the *requirements* of membership without the *benefits* which derive from membership. And it is not an answer to say that the employee can join, because that is giving him an alternative which he cannot be required to take in a "right-to-work" state. The device of the agency shop, where "membership" is unlawful, is such an impairment of an employee's freedom that, in my view, it is a travesty to condone the imposition of such device when the Act forbids the requirement of literal membership.

In view of the foregoing, I am satisfied that the reliance of the General Counsel and the UAW on *Public Service of Colorado*, 89 NLRB 418 and *American Seating Co.*, 98 NLRB 800 is misplaced. For, unlike the instant matter, both cases involved a valid agreement, requiring membership as a condition of employment, which was protected

under the first proviso to Section 8(a) (3); and neither case involved a "right-to-work" jurisdiction. Significantly, in both *Public Service* and *American Seating*, no legal impediment existed to preclude the parties from entering into the contracts requiring all employees to be union members, and they made such contracts. Thus the choice extended to the [fol. 72] employees there, between membership and support which did not involve membership, is wholly different from the "Hobson's choice" which the UAW would extend to the employees here.

Based on the foregoing considerations, I conclude that the agency-shop clause concerning which UAW requested GM to bargain is, under the National Labor Relations Act, illegal in Indiana, and that GM was under no obligation to negotiate concerning such a clause with UAW. Accordingly, GM not having violated the Act as alleged, the complaint should be dismissed.

Dated, Washington, D. C.

Boyd Leedom, Member, National Labor Relations Board

(Seal.)

[fol. 73] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SEVENTH REGION

Case No. 7-CA-2560

In the Matter of: GENERAL MOTORS CORPORATION, RESPONDENT, AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO, Charging Party.

EXCERPTS FROM STENOGRAPHIC TRANSCRIPT OF TESTIMONY AT HEARING OF FEBRUARY 10, 1960

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before: Mr. Albert P. Wheatly, Trial Examiner.

APPEARANCES:

Mr. George Cherpelis, 1600 Industrial Building, Detroit 26, Michigan and Mr. Herman Corenman, 1600 Industrial Building, Detroit 26, Michigan, appearing as Counsel for the General Counsel; Mr. Harry S. Benjamin, Jr., and Mr. K. D. Mann and Mr. E. L. Hartwig, (For Henry M. Hogan, General Counsel), 3044 West Grand Boulevard, Detroit 2, Michigan, appearing on behalf of General Motors Corporation, the Respondent; Mr. Harold A. Cranefield, General Counsel, and John A. Fillion, 8000 East Jefferson Avenue, Detroit 14, Michigan, appearing on behalf of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, the Charg-[fol. 74] ing Party; Mr. Owen J. Neighbours, Cadick, Burns, Duck and Neighbours, 1350 Consolidated Building, Indianapolis, Indiana, representing Raymond E. Lewis, et al.

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PROCEEDINGS

* * * * * * *

COLLOQUY BETWEEN TRIAL EXAMINER AND COUNSEL

Mr. Cherpelis: At this time, Mr. Examiner, I would like to propose the following stipulations:

One: That on or about October 20, 1959, by letter of that date, the Union made a demand upon Respondent to bargain, requesting that Respondent appoint a time and place for a meeting between representatives of the Union and of the Respondent for the purpose of collective bargaining concerning the exact terms of the proposed supplementary agreement to their existing National Agreement, whereby Respondent's employees represented by the Union in Respondent's plants and facilities located in Anderson, Bedford, Kokomo, Indianapolis, Marion and Muncie, Indiana not already members of the Union and new employees hired thereafter should be required as a condition of continued employment after—could we go off the record, for a second please?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record. All right, Mr. Cherpelis.

Mr. Cherpelis: —after thirty days following the date of such supplementary agreement or of their initial employment, whichever is later, to pay to the Union a sum equal to the initiation fee charged members at each of the Union's local unions, herein called locals, involved, and monthly sums equal to the regular dues required of the Union's or Local's members at each location.

May that above paragraph be stipulated to?

Trial Examiner: So stipulated, Gentlemen?

Mr. Benjamin: So stipulated by the Respondent.

Mr. Cranefield: Stipulated by the Charging Party.

. . . . . .

[fol. 75] Mr. Cherpelis: And offering the following stipulation: May it be stipulated and agreed among the parties that the document marked for identification as General Counsel's Exhibit 2(a) is a true and accurate copy of the letter sent by the Union to the Respondent referred to in the preceding paragraph, and—

Mr. Cranefield: Stipulated.

Mr. Cherpelis: —and may it be further stipulated and agreed among the parties that this document be received in evidence as General Counsel's Exhibit 2(a) for the purpose of showing the request made by the Union, and not for the purpose of establishing the validity of other matters therein alleged? May it be so stipulated?

Mr. Benjamin: So stipulated on behalf of the Respondent.

Mr. Cranefield: So stipulated by the Charging Party.

. . . . . .

Mr. Cherpelis: May it be further stipulated that on or about October 27, 1959, by letter of that date, Respondent answered the Union's letter identified in General Counsel's Exhibit 2(a), stating, among other things, "Because we are of the opinion that an 'agency shop' agreement such as that previously proposed by you and as now detailed in your letter of October 20, 1959, would violate the National

Labor Relations Act, as amended, if incorporated in a collective bargaining agreement, we respectfully decline to comply with your request for a meeting for the purpose stated in your letter of October 20, 1959", and Respondent has continued to decline to meet with the Union for the purpose requested in General Counsel's Exhibit 2(a).

I will now ask the reporter to mark for identification General Counsel's Exhibit 2(c).

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 2(c) for identification.)

Mr. Cherpelis: I offer the following stipulation:

Trial Examiner: Let's give the reporter a little time. Now, how about this last stipulation? Is that acceptable with everybody?

[fol. 76] Mr. Benjamin: So stipulated on behalf of the Respondent.

Mr. Cranefield: So stipulated by the Charging Party.

. . . . . .

Mr. Cherpelis: May it be further stipulated and agreed among the parties that the reason Respondent did decline to comply with the request of the Union, General Counsel's Exhibit 2(a), and did decline to bargain concerning or enter into such proposed supplementary agreement, was that to do so would be violative of the National Labor Relations Act, as amended.

Trial Examiner: So stipulated, gentlemen?

Mr. Benjamin: So stipulated by the Respondent.

Mr. Cranefield: And on behalf of the Charging Party.

. . . . . .

Mr. Cherpelis: Will the parties further stipulate and agree that among Respondent's employees employed in its plants in Anderson, Bedford, Indianapolis, Kokomo, Marion and Muncie, Indiana, there are employees not contended, for purposes of this proceeding, to constitute a majority, who are within the bargaining unit described in paragraphs 6(a) and 6(b) of the Complaint, and who have been so employed in excess of ninety days, and who are not now

members of the Union or its Locals, and who do not desire to become members of the Union or its Locals, and who would not desire to make support payments to the Union or its Locals should a type of agreement such as that proposed by the Union, and identified by it as an "agency shop" agreement, be entered into supplementally to General (18) Counsel's Exhibit 2(b), the National Agreement.

* * * * * * *

[fol. 77] WOODCOCK, LEONARD:

Direct Examination.

By Mr. Benjamin:

Q. Will you state your name and title, please?

A. Leonard Woodcock, Vice President of the International Union, UAW, and Director of the General Motors Department.

Q. How long, Mr. Woodcock, have you been an employee of the International Union?

A. With brief intervals, since September of 1940.

Q. And how long, Mr. Woodcock——

A. I mean with the exception briefly.

Q. How long, Mr. Woodcock, have you been a vice-president of the International Union, UAW?

A. Since the Spring of 1955.

Q. And how long, Mr. Woodcock, have you been the head of the General Motors Department?

A. Since December of 1955.

(Thereupon, a document was marked Respondent's Exhibit No. 1 for identification.)

By Mr. Benjamin:

Q. Mr. Woodcock, I hand you what has been marked for identification as Respondent's Exhibit Number 1, a booklet, and ask you if you can tell us what that is?

A. This is a copy of the Constitution of the International

Union, UAW, as adopted at its convention and amended at that convention in April of 1957.

Q. Attached or stapled to the exhibit which you have identified is a small grey pamphlet which I believe to be the amendments to the principal exhibit, is that not correct? The amendments as of January, 1958?

A. These were additional amendments made at a special convention in January of 1958, yes, sir.

Q. Mr. Woodcock, are you the same Leonard Woodcock whose name is set forth on the last page of the document I have handed you, and identified as International Vice President?

[fol. 78] A. Yes, sir, I am.

Q. And that is the Constitution of the Union of which you are a Vice President, and that is the same Union of which you are the head of the General Motors Department, is that correct?

A. That's right; yes sir.

Mr. Benjamin: I offer in evidence Respondent's Number 1.

Trial Examiner: Are there any objections?

Mr. Coreman: We object to it as immaterial. I don't know what the relevance or materiality of the exhibit is.

Mr. Cranefield: I think the purpose for which it is offered ought to be stated, Mr. Examiner.

Trial Examiner: Mr. Benjamin?

Mr. Benjamin: Well, the Union, in General Counsel's Exhibit 2(a), sets forth a type of union security which it has asked the Respondent to discuss, and it describes that form of union security as being dependent upon a sum being equal to the initiation fee charged at each of the local unions involved and monthly sums equal to the regular dues required of the members at each location.

Now, I can't think of any better document that would describe what a member is or what the dues might be or the initiation fee might be, than the Union's Constitution.

For that reason, I think it is very relevant and material to the issues involved here.

• • • • • • •

Trial Examiner: I am going to receive the document.

Mr. Benjamin: Respondent's Exhibit 1 is accepted in evidence?

Trial Examiner: Right.

By Mr. Benjamin:

Q. Now, Mr. Woodcock, you have been a member of the Union for how long?

A. Ever since the organization of the UAW, as such.

Q. Which dates back to? That goes back to what date, approximately?

[fol. 79] A. The South Bend Convention in 1936.

Q. You have been associated with the Union continuously since that time?

A. Yes, sir.

Q. In some capacity

A. Yes.

Q. At the present time are you a member of the UAW's International Executive Board?

A. Yes, sir. I am.

Q. And, Mr. Woodcock, over the past several years have you been a regular attendant or delegate to the UAW's National Conventions?

A. I have been present at every convention from 1940 to date, either as a delegate or a representative of the International Union.

Q. We can assume, therefore, Mr. Woodcock, that you are thoroughly familiar with the union's constitution, can we not?

A. I would say reasonably conversant.

. . . . . .

Q. I will ask you, Mr. Woodcock, as to whether General Counsel's Exhibit 2(b), which is the current National Agreement between General Motors Corporation and the UAW, has any union security provisions in it?

A. Yes, sir, it does.

Q. Now, handing you General Counsel's Exhibit 2(b), I will direct your attention to Section (4b) of the agreement, which commences on page three and runs over to the top of page four, and ask you if you will examine that.

A. Yes, sir. I have.

Q. Now, after having examined that particular clause, can you tell us whether the union security provisions in this agreement are applicable to employees represented by your union under this agreement in the Indiana plants covered by your Charge?

A. Under the stipulation of (4b), as written without a further understanding of a meeting of the minds relative thereto on the text as it appears, the answer would be no.

[fol. 80] Q. And why do you say that, Mr. Woodcock?

A. Because it specifies particularly that an employee shall not be required to become a member of or continue membership in the Union as a condition of employment if employed in any state which prohibits or otherwise makes unlawful membership in a labor organization as a condition of employment.

Q. And it is the union's understanding that there is a law in Indiana which prohibits membership in a union as a condition of continued employment, is that correct?

A. Yes, sir.

* * * * * * *

By Mr. Benjamin:

Q. Does the UAW have members among the employees covered by this agreement at each of the locations covered by the Charge herein?

A. Yes, sir, we do.

Q. In order to become members of the union would these employees pay an initiation fee?

A. Unless they were coming with a transfer card from another UAW Local Union, or, in many instances, from other unions, in which event we accept such transfer card in lieu of the initiation fees.

Q. Well, that would indicate a previous membership in the union, would it not? A transfer card?

A. A transfer card? In some union, yes, sir.

Q. Assuming you are not talking about an individual who has previously belonged to the union, he would have to pay an initiation fee in order to become a member of the union, is that right?

A. Normally, yes, sir. I say "normally" because on oc-

casion we do waive, by action of the International Executive Board, the requirement of payment of initiation fees.

Q. But that would be the unusual exception rather than the rule, would it not?

A. It is abnormal, yes, sir.

Q. And these employees who are admitted to membership after having paid an initiation fee, are they required to pay monthly dues thereafter?

A. Under the stipulated requirements of our constitution, which is that of working forty hours or more in any [fol. 81] given month, they are then required to pay the dues as stipulated.

Q. In other words, under normal circumstances a man who has been admitted to membership after payment of his initiation fee would thereafter be required, in the normal case, to pay monthly dues in order to remain a member in good standing, is that not correct?

A. Yes, sir.

Q. Now, are these employees of General Motors Corporation who are working in the nine plants covered by your charge herein, and who are represented exclusively by the UAW, and who are also members of the Union, entitled to all of the privileges and benefits spelled out in the union's constitution as long as they remain members in good standing?

A. Yes, sir. They are.

Q. May I ask you, Mr. Woodcock, directing your attention to General Counsel's Exhibit 2(a), if you are familiar with the proposal made to General Motors Corporation to consider meeting for the purpose of entering into an agreement such as is spelled out in that exhibit?

A. Yes, I am.

Q. Will you tell us, after examining that exhibit, what the requirements would be for an employee in one of the Indiana plants to continue in employment if that agreement, as proposed, were to be executed?

Mr. Cranefield: May I hear that question read by the reporter?

Mr. Benjamin: May I withdraw the question?

Trial Examiner: All right, if you want to restate it.

By Mr. Benjamin:

Q. Is it not true that the agreement which the union proposed in its letter of October 20th to General Motors Corporation, and which is set forth in General Counsel's Exhibit 2(a), would condition the continued employment in the nine General Motors plants involved in your Charge, upon the payment of a sum equal to the initiation fee usually charged members, and, thereafter, the payment of a monthly sum equal to the regular dues usually charged members?

[fol. 82] Mr. Cranefield: Mr. Examiner, the exhibit speaks for itself. I think that Mr. Benjamin is quite accurately paraphrasing it, but I see nothing to be gained, for the advantage of the Board in deciding the case, in this paraphrasing of it. The exhibit speaks for itself. I see no mistake in his statement of it, but why paraphrase it?

Trial Examiner: I am inclined to agree, Mr. Benjamin, and I would like to hear from you on this.

Mr. Benjamin: Well, I wanted to make sure that Mr. Woodcock fully understood this proposal. It was made some four to five months ago, and it is simply for the purpose of making sure that he is thoroughly familiar with it at this time.

Trial Examiner: I suggest that you go on with your next question.

Mr. Benjamin: All right.

By Mr. Benjamin:

Q. State whether or not it is the union's proposal that non-members of the Union in Indiana will be able—would be able to continue their employment in General Motors plants only if they paid an amount equal to the initiation fee charged to members and if they paid monthly thereafter an amount equal to the dues usually paid by members in the General Motors plants covered by your Charge?

A. It is my understanding that our proposal would require the payment of a service fee from those who chose not to be members, and would be a condition of their continued employment.

Q. It is true, is it not, Mr. Woodcock, that the union recognizes that it has an obligation, as a certified collec-

tive bargaining agent of the General Motors employees in their nine locations specified in your Charge, to represent all employees, whether they are members or not?

A. Yes, sir, we do.

Trial Examiner: May I see that Exhibit 2(a)? No, the letter.

Mr. Benjamin: The letter? Oh, yes.

Trial Examiner: Thank you. The reason I asked for the exhibit, the witness used a term that I didn't think was [fol. 83] in the exhibit, and I don't see it in there. "Service fees from those who chose not to be members". I didn't recall anything in there that gave them a choice.

* * * * * * *

Mr. Cranefield: If I may be permitted, Mr. Examiner, I would suggest that neither you nor the Board ought to infer from the term used by the witness the idea that any other proposal than that embodied in the letter is in his mind.

The term "service fee", I took it to be his characterization of the payment that would be required under the proposal outlined in the letter, which is an exhibit.

Trial Examiner: I just want to be sure what issue I have before me. I just want that to be clear. The only one I have before me is the proposal in that letter, is that correct?

Mr. Cranefield: That's correct. There are no other issues.

Trial Examiner: Do you agree with that, Mr. Benjamin?

Mr. Benjamin: Just one second, please. Well, Mr. Examiner, I think the witness apparently is familiar with the proposal, and I assume if there is any ambiguity now he has the opportunity to clarify it in any way that he may wish to.

Trial Examiner: I am also going to be clear as to what I am going to decide. I want to know what position you are taking, and I'm going to ask the General Counsel what position he is taking.

Mr. Benjamin: Yes, sir.

Mr. Cranefield: Let me state our position, Mr. Examiner. I don't want any confusion to develop here.

Mr. Woodcock, in the letter of October 20th—I believe is the date—which is an exhibit—characterized the proposal as a proposal for an agency shop. That was the term used in the letter. In his last response to Mr. Benjamin's question he characterized the payment that would be required under the contract, as proposed, as a service fee. It was a mere characterization of the payment.

[fol. 84] Trial Examiner: Look, gentlemen, we are doing a lot or needless sparring here, I think. The issues are as framed in the Complaint and the Answer?

Mr. Cranefield: Right.

Trial Examiner: Which clearly we are talking about, this proposal; not some other proposal?

Mr. Benjamin: That's correct.

Trial Examiner: All right. Let's go on.

* * * * * * *

Trial Examiner: Obviously if you had honored the demand and come to the bargaining table they might have come up with some other proposal, but that isn't the thing I have before me. I have enough problems deciding the issues before me, without getting any more.

Mr. Cranefield: I am sure that no party intends to enlarge the issues or change them.

* * * * * * *

By Mr. Benjamin:

Q. Mr. Woodcock, would you take Respondent's Exhibit 1 or Respondent's Exhibit 2 whichever one you want to refer to. Turning now to the Constitution of the Union, would you point out the provision or provisions, if any, which deal with the type of agreement proposed by the Union and as described in General Counsel's Exhibit 2(a), and which the respondent has declined to enter into?

Mr. Cranefield: I object to that question. There has been no foundation, for one thing. There is no testimony that the proposal which underlies the charge reflects any provision of the union's constitution.

Mr. Benjamin: Well, now, Mr. Cranefield, if you want to testify that's something else.

Trial Examiner: Let me go a little bit deeper. Supposing that the proposal, General Counsel's Exhibit 2(a), is contrary to the Constitution? What difference would it make?

Mr. Benjamin: Well, Mr. Woodcock has testified that he recognizes that the Union has the obligation to represent all employees, whether they are members or not.

[fol. 85] Now, he has also testified that the Constitution sets forth the rights of members. What I am interested in finding out is whether this particular proposal which is made in this letter is contained or if there is anything in that Constitution that would relate to this proposal because presumably it has to do with non-members. They have an obligation to represent both. * * *

* * * * * * *

Mr. Benjamin: He says they recognize they have that obligation.

Trial Examiner: I heard him say that, but it is still a question of law, and I will have to be guided by what the Courts say.

The other point that I'm asking you is what difference does it make whether the Constitution relates to this matter or not? Supposing it's contrary to the Union Constitution? Would that throw any light on the matter, on whether or not the demand is a lawful or an unlawful demand?

Mr. Benjamin: It may very well.

Trial Examiner: Why?

Mr. Benjamin: Because if there are provisions in the Constitution that relate or establish certain rights, benefits and privileges for members, but do not for non-members, it may have a distinct bearing on whether this particular proposal is discriminatory.

Trial Examiner: Well, I don't see how at the moment. I am going to let him answer the question. Maybe it will become clearer then than it is, depending on his answer. Go ahead.

Mr. Cranefield: I think the witness should have the benefit of a re-reading of the question.

Trial Examiner: All right, read it back, please.

(The reporter read as follows: "Question: (By Mr. Benjamin) Mr. Woodcock, would you take Respondent's Exhibit 1 or Respondent's Exhibit 2—whichever one you want to refer to. Turning now to the Constitution of the Union, would you point out the provision or provisions, if any, which deal with the type of agreement proposed by the [fol. 86] Union and as described in General Counsel's Exhibit 2(a), and which the respondent has declined to enter into?").

The Witness: The sum equivalent to the union members' obligation—as far as the monthly dues and initiation fee is concerned—is spelled out in Article 16, and as specifically there spelled out is utilized by the Union in its determination under the Union Shop contracts as they have existed in Indiana, and has been used in Canada under similar formula provisions.

By Mr. Benjamin:

Q. Is that to say that in fixing the amount of the initiation fee or the amount of monthly dues under an agency shop provision they are the same or equivalent to the initiation fees and dues spelled out there for members?

A. Yes, sir.

Q. Is there anything in the Constitution of the Union which sets forth the rights, benefits and privileges of non-members of the union who may, nevertheless, be represented by the union for collective bargaining purposes?

A. Not specifically, sir; but, in this connection, we extend to people under these provisions all of the rights which they wish to accept.

Q. Do you permit a non-member of the Union to participate in union meetings without the payment of an initiation fee or membership dues?

A. No, sir.

Q. Do you permit a non-member of the union to vote on the ratification of an agreement entered into or negotiated by you? Do you permit non-members to vote in that ratification?

A. No, sir.

Q. With respect to the employees which you represent in the Indiana plants of General Motors Corporation who

are members of the union, and who are required—as a condition of continued employment—to maintain their membership by the payment of an initiation fee and monthly dues, does your Constitution indicate how their monthly dues are to be distributed?

[fol. 87] A. Yes, sir. It does.

Q. Now, is that taken care of in Article 16, Section 12, of the Constitution?

A. Section 12 deals with part of the assignment of the total dues. Article 16 in various parts deals with all of it.

Q. Directing your attention, Mr. Woodcock, to Article 16, Section 12, is there any provision in there that indicates what portion of an employee's dues go for the support of the union's official paper, "Solidarity"?

A. Yes, sir. It prescribes a five-cent allotment per member for that purpose.

Q. Who is entitled to get that paper? Your Union's official organ?

A. All of those who are on the rolls of the union.

Q. And that is everyone who is a member, is that correct?

A. Oh, in many cases it goes beyond those who are members.

Q. Is there any provision in the Union's Constitution that the paper must be distributed to non-union members?

A. Not specifically, no, sir.

Q. As a matter of fact, a non-union member cannot get it without paying an additional fee, isn't that correct?

A. No, I think many do get it.

Q. I beg your pardon?

A. Many do get it. Non-members in Canada get it because they are carried on our rolls.

Q. Do non-members in Indiana get it?

A. If they are——

Mr. Cranefield: As of now?

Trial Examiner: I take it as of now, yes.

The Witness: If they are non-members in the sense of non-paying to any extent then the chances are the answer would be "no", but non-members in agency shops in Indiana do get it, yes, and they are carried on our rolls.

By Mr. Benjamin:

Q. I direct your attention to Article 28, Section 6, and ask you if the Constitution there does not provide "to non-members the rate shall be one dollar per annum, with postage additional for foreign subscribers"?

[fol. 88] A. Yes, sir, it specifies that.

Q. Now, "Solidarity" is the International Union's official publication distributed to all members, is it not?

A. Yes, sir.

Q. And the Constitution so provides, of course?

A. Yes, sir.

Q. That publication is used for informing members of current developments within the union, as to all matters relating to wages, hours and conditions of employment, is that not correct?

A. Yes, sir.

Q. Is there any provision in the Union's Constitution whatsoever that would require or permit any part of the monthly dues paid under an agency shop provision to go to the support of the "Solidarity" publication?

A. It is done as a matter of practice.

Q. Is there anything in the Constitution that requires it?

A. No, sir.

Q. I now direct your attention to Article 16, Section 12-C and ask you whether, under the language there, a percentage of a member's compulsory dues go to a retired-members fund which is used to promote and support programs benefiting retired members?

A. That so states, yes, sir.

Q. What provision is there in the Union's Constitution for the development and extension of such benefit programs to non-members represented by your union who have paid an amount equivalent to the monthly dues paid by members?

A. Well, elsewhere in the Constitution in this particular it is specified that our Retired Members Programs are to be integrated with community programs and the funds pooled for that purpose without regard to previous membership in the UAW.

Q. But there is no specific provision in the constitution at the present time which makes it mandatory to take any

of the dues paid under an agency shop arrangement and use them for such recreation programs, is there?

[fol. 89] A. Yes, sir. As I tried to say, the Constitution demands that where a community program is in effect that, apart from the question of agency shop, our local unions are to cooperate with such community programs in the spending of this one-cent allocation.

Q. But where there is an agency shop provision. You say apart from that. But where there is an agency shop provision is there any provision in the Constitution that says that the moneys collected in the form of dues from such non-members must in some way be diverted to these Retired Members Funds?

A. It would equally apply, yes, sir.

Q. Is there anything in the Constitution which requires that, Mr. Woodcock?

A. Yes, sir. I have tried to indicate that there is.

Q. Is that—what is the situation if there is no community program?

A. The local union then set up its own program and endeavors to develop a community program.

Q. But that is not required under the Constitution, is that correct?

A. It's required under the Constitution, and our policy under that Constitution.

Q. Now, turning your attention to the subject of education, look at Article 16, Section 12.3. With respect to members who are required to pay monthly dues as a condition of membership, is a portion of those dues diverted to an Educational Fund?

A. Yes, sir.

Q. Is there anything in your Constitution which specifically requires that the amounts collected in the form of monthly dues from non-members must go to an Educational Fund from which they could benefit?

A. Not specifically, no, sir. It is our general practice to have such a program open, however.

Q. Now, directing your attention to Article 16, Section 2, as amended by the Convention action in January of 1958, [fol. 90] or as amended at your most recent convention, is it not true that a portion of the monthly dues paid by a member goes into a strike fund?

A. Yes, sir.

Q. And is it not true that under certain conditions, determined by the Union, a member who is engaged in a strike may receive benefits from the fund, the strike fund set up as a result of monthly dues contributions?

A. Yes, sir.

Q. Is there any thing in the Union's constitution which specifically provides for the allocation of moneys collected from Non-members, anything that provides for the allocation of moneys collected from non-members' dues to a strike fund?

A. They have and they do, under the agency-shop provisions and the formula provisions.

Q. Is there anything in the Union's constitution which specifically covers or specifies that the amounts collected from a non-member in the form of monthly dues must be diverted or will be diverted to a strike fund from which they can benefit?

A. We have always construed, Mr. Benjamin, this Constitution to say that where the sum required is equivalent to that of a member that then they are entitled to the same benefits as a member unless they themselves choose not to make them available to them.

Q. Is there anything in the union's constitution that specifically so provides?

A. Well, because our constitution isn't written in terms of non-members, I can't say that it is, but we understand it under the terms of the application of Article 16 and all of the concomitant paragraphs.

Q. In other words, the union's constitution is written exclusively for members, is it not?

A. It is written in the sense of membership.

Q. I think you have already indicated, have you not—just so it is clear—that there is no provision in the Union's constitution for non-members to vote with respect to the ratification of any agreement that may have been negotiated on behalf of employees you represent?

[fol. 91] A. In terms of our membership ratifications, no, sir.

Q. Well, is there anything in the union's constitution which specifically spells out or protects the rights of the

non-members who are represented exclusively by the union pursuant to a live certification issued by the NLRB?

A. No, sir.

Mr. Benjamin: Just one second, Mr. Trial Examiner.

By Mr. Benjamin:

Q. Mr. Woodcock, if a member pays dues and initiation fees in Indiana under your proposed agreement would he still have to pay the service fee as a condition of employment?

Mr. Cranefield: May I hear that question again?

Trial Examiner: Will you read it back?

Mr. Benjamin: If a member pays dues and initiation fees in Indiana under your proposed arrangement, would he still have to pay the service fee as a condition of employment?

Mr. Cranefield: May I ask whether you are inquiring whether a member would pay twice? Is that what the question is? The question is not clear to me, and I doubt that it is to the witness.

Trial Examiner: Well, it's not clear to me, but on another point.

You say would he have to pay a service fee as a condition of employment. Now, do you mean under the State law or the National law or the contract or under some other such thing?

Mr. Benjamin: Under this particular proposal that they have made to us, as set forth in General Counsel's Exhibit 2(a).

Mr. Cranefield: I renew my objection; that the proposal speaks for itself. It's in writing.

Trial Examiner: I am going to sustain that objection.

By Mr. Benjamin:

Q. Well, let's assume for a minute that you do have an employee who voluntarily has become a member of the union in Indiana at the present time, and let's assume that he has paid an initiation fee and is paying monthly dues under your constitution. Would your proposal to us require that he also pay the service fee in order to continue his employment with us?

[fol. 92] A. Well, Mr. Examiner, I probably should apologize for introducing a layman's error into this record. I understand by our proposal that we are asking that non-members in Indiana shall pay a financial sum equivalent to the obligation required of those who are members. Specified in our Constitution as far as dues is concerned, specified in our Constitution under the initiation fee, but that being further limited by our contractual understanding with the General Motors Corporation which limits the initiation fee to the constitutional minimum so that General Motors Local Unions in Indiana or elsewhere are not free, despite our constitution, to raise their initation fee beyond the minimum prescribed in the constitution.

I am thinking of in the proposal which I signed, as to asking that all employees pay the same financial obligations.

Trial Examiner: Are you satisfied, or do you want something else?

Mr. Benjamin: Well, there was an outstanding question. I thought Mr. Woodcock interrupted for a minute when he said he wanted to correct an error. Now, is that the answer to the question, too?

The Witness: In my poor fashion, yes, sir.

Mr. Benjamin: All right.

By Mr. Benjamin:

Q. Is there any provision in the Union's constitution which permits any non-member to vote with respect to how the monthly dues which he might pay to the union would be distributed for the various purposes which we have previously enumerated. Namely, an employee's retirement fund or for Solidarity or for strike benefits?

A. No, sir.

Mr. Benjamin: Right at the minute I don't think we have anything else, Mr. Examiner.

Trial Examiner: Mr. Cherpelis? Do you have any further questions?

Mr. Cherpelis: General Counsel has no questions of this witness.

Trial Examiner: Mr. Cranefield?

* * * * * * *

[fol. 93] Re-direct examination.

By Mr. Benjamin:

Q. With reference to General Counsel's Exhibit 2(a), I would like to ask you this question. Is the agency-shop arrangement which you have proposed to General Motors in that letter intended to be the same as the agency shop covered by the decision in the Myade case referred to in the same letter?

Mr. Cranefield: I renew my objection, that the exhibit and the proposal therein contained speaks for itself.

Trial Examiner: I am inclined to agree, Mr. Benjamin.

* * * * * * *

Mr. Benjamin: Your agency shop which you propose to us, is that exactly the same as that agency shop?

Mr. Cranefield: I still think the exhibit speaks for itself.

* * * * * * *

Mr. Cranefield: It was to avoid the possibility of such a decision that our proposal outlined all the essential substantive elements.

* * * * * * *

Mr. Cranefield: We'll sharpen the issue here, Mr. Examiner, in two ways. First, by the fact that our proposal embodies every essential substantive element of an agency-shop agreement, leaving only, as I say, peripheral matters for negotiation; and, secondly, by the focus of the company's refusal to meet, which is upon the single stated ground that they believe such an agreement, if reached, would be in contravention of the National Labor Relations Act.

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[fol. 94] BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCERPTS FROM GENERAL COUNSEL'S EXHIBIT 2(b)

Agreement Between General Motors Corporation and the UAW-AFL-CIO

October 2, 1958

* * * * * * *

Recognition

* * * * * * *

3

Union Security and Check-Off of Union Membership Dues

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(4b) Anything herein to the contrary notwithstanding, an employee shall not be

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required to become a member of, or continue membership in, the Union, as a condition of employment, if employed in any state which prohibits, or otherwise makes unlawful, membership in a labor organization as a condition of employment.

[fol. 95] BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCERPTS FROM RESPONDENT'S EXHIBIT 2

Constitution of the International Union United Automobile, Aircraft and Agricultural Implement Workers of America, UAW

Adopted at Atlantic City, N. J. October, 1959

* * * * * * *

44

Article 16

Initiation Fees and Dues

48

Section 12. The International Union shall set aside all sums remitted by Local Unions as Union Strike Insurance Fund dues and the funds resulting shall be a special fund to be known as the International Strike Insurance Fund, to be drawn upon exclusively for the purposes of (1) aiding Local Unions engaged in authorized strikes and in cases of lockouts, and (2) assisting by donations or loans other International Unions and non-affiliated Local Unions similarly engaged, and (3) meeting financial obligations or expenditures which this International Union or its affiliated Local Unions incur as a result of authorized strikes or in [fol. 96] cases of lockouts, and then only by a two-thirds (⅔) vote of the International Executive Board. From the remainder of each member's monthly per capita tax, the International Union shall set aside:

1. Five cents (.05) which shall be expended only for publication of "Solidarity," the official publication of the International Union or of any successor official publication.

2. One cent (.01) to the Fair Practices and Anti-Discrimination Fund to be expended only for the sup-

port and promotion of the programs and activities of the International Union in support of fair employment practices and in opposition to all discriminatory practices in employment.

3. Three cents (.03) as the International Union Education Fund to be expended only for the programs and activities of the International Union Education Department.

4. One cent (.01) as the International Union Recreation Fund which fund shall be apportioned to each region on a per capita basis.

5. Five cents (.05) as the Special Citizenship Fund to be used for the purpose of strengthening democracy by encouraging members and citizens generally to register and vote in community, state and national elections and to carry on organizational and educational programs directed toward the achievement of an ever higher understanding of citizenship responsibility and the need for active participation in the affairs of a free and democratic society.

6. One cent (.01) as the International Union Retired Members Fund, which shall be used only to promote and support programs benefiting retired members, including such programs of the International Union relating to retired members as may be adopted from time to time, and to finance the operation of the International Union Retired Members Department.

[fol. 97] * * * * * * *

67

Article 28

Official Publication

Section 1. There shall be published at least once a month by the International Union a publication designed to educate the membership and to acquaint the membership with the activities of this International Union. Special editions for all, or a particular segment, of the membership shall be printed from time to time as the International Execu-

tive Board may direct. The title of said publication shall be "Solidarity," or its successor designation, Official Publication of the International Union.

* * * * * * *

Section 5. This publication is to be sent through the United States mail to each member in good standing.

Section 6. To non-members, the rate shall be one dollar ($1.00) per annum with postage additional for foreign subscribers.

[fol. 98] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 14786

GENERAL MOTORS CORPORATION, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition for Review and on Cross-Petition for Enforcement of An Order of the National Labor Relations Board

APPENDIX FOR THE NATIONAL LABOR RELATIONS BOARD—Filed March 5, 1962

[File endorsement omitted]

[fol. 99] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SEVENTH REGION

Case No. 7-CA-2560

IN THE MATTER OF GENERAL MOTORS CORPORATION, Respondent and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO, Charging Party

EXCERPTS FROM STENOGRAPHIC TRANSCRIPT OF TESTIMONY AT HEARING OF FEBRUARY 10, 1960

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock a.m.

Before Mr. ALBERT P. WHEATLY, Trial Examiner.

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PROCEEDINGS

* * * * * * *

Cross-examination.

By Mr. CRANEFIELD:

Q. Mr. Woodcock, directing your attention to Article 3 of the Constitution——

Mr. Benjamin. Which one are you referring to?

Mr. Cranefield. The current constitution, Respondent's Exhibit 2, I guess it is.

[fol. 100] By Mr. CRANEFIELD:

Q. Is it your understanding that the effect of that Article of the constitution is that all of the non member employees in the Indiana plants involved in this matter are free to join the union without restriction?

A. [Mr. Woodcock]. Without restriction; yes, sir.

Q. Do you know, Mr. Woodcock, what the practice is—what the uniform practice of the union is—with respect to the disbursement of strike relief assistance to non-members?

A. Who are paying an equivalent financial obligation?

Q. Whether they are or not?

A. If they are not paying anything they are not qualified to participate in strike benefits. If they are, even though they are non-members, they receive the same benefits as members.

Q. If they are paying a sum equivalent to dues they share in the strike benefits on the same footing as a member?

A. Yes, sir.

Q. That is the established practice?

A. Yes, sir. It is.

Mr. Cranefield. I think that's all.

[fol. 101] Before the National Labor Relations Board

General Counsel's Exhibit 2(a)

General Motors Corporation,
General Motors Building,
Detroit 2, Michigan.

Attention: Mr. Louis G. Seaton, Vice President

Gentlemen:

You will recall that at the time we concluded our current National Agreement there was pending in the Indiana courts an appeal from the decision of a trial court of general jurisdiction holding that a union security agreement of the so-called "agency shop" type under which employes were required, if not having voluntarily joined the union, to pay to the union a sum equal to the union's initiation fee and, thereafter, monthly sums equal to the union's regular dues and assessments did not contravene the Indiana Right-To-Work Law enacted in 1957. The case was *Meade Electric Company* v. *Hagberg*.

Having that case in mind we proposed that if the Indiana trial court was affirmed on appeal we would then enter into collective bargaining on our request on a specific proposal of ours for a similar agreement covering em-

ployes represented by us in your five Indiana plants. You indicated that even if there was affirmance on appeal, you would not bargain concerning an agency shop proposal unless you were satisfied that such a form of union security did not violate the National Labor Relations Act as amended.

The *Meade Electric Company* case was affirmed by the Indiana Appellate Court on June 19, 1959. I believe that [fol. 102] an application to the Indiana Supreme Court for review of the decision of the Appellate Court has been denied more recently.

We are advised by our counsel that an agreement generally similiar to that set forth in the *Meade Electric Company* case but omitting the requirement that employes pay sums equivalent to the union's assessments would not be in violation of any provision of the National Labor Relations Act as amended. Accordingly, we request herewith that you appoint a time and place for a meeting with the usual representatives of this organization for the purpose of collective bargaining concerning the exact terms of an agreement supplementary to our existing National Agreement whereby the employes we represent in your Indiana plants (not already members of the union) and new employes hired thereafter should be required as a condition of continued employment after 30 days following the date of such supplementary agreement or of their initial employment (whichever is later) to pay to the UAW a sum equal to the initiation fee charged at each of our local unions involved and monthly sums equal to the regular dues required of our members at each location.

Very truly yours, Leonard Woodcock, Vice President, Director, General Motors Department.

LW: mw
ociu—42

[fol. 103] BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCERTS FROM GENERAL COUNSEL'S EXHIBIT 2(b)

Agreement Between General Motors Corporation and the UAW-AFL-CIO

October 2, 1958

* * * * * * *

RECOGNITION

* * * * * * *

Union Security and Check-Off of Union Membership Dues

(4) An employe who is a member of the Union at the time this Agreement becomes effective shall continue membership in the Union for the duration of this Agreement to the extent of paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union.

(4a) An employe who is not a member of the Union at the time this Agreement becomes effective shall become a member of the Union within 60 days after the thirtieth (30th) day following the effective date of this Agreement or within 60 days after the thirtieth (30th) day following employment, whichever is later, and shall remain a member of Union, to the extent of paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union, whenever employed under, and for the duration of, this Agreement.

(4b) Anything herein to the contrary notwithstanding, an employe shall not be required to become a member of, or continue membership in, the Union, as a condition of [fol. 104] employment, if employed in any state which prohibits, or otherwise makes unlawful, membership in a labor organization as a condition of employment.

(4c) The Union shall accept into membership each employe covered by this Agreement who tenders to the Union the periodic dues and initiation fees uniformly required as

a condition of acquiring or retaining membership in the Union.

* * * * * * *

(4f) "Member of the Union" as used in paragraphs (4) and (4a) above means any employe who is a member of the Union and is not more than sixty (60) days in arrears in the payment of membership dues.

[fol. 105] BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 2(c)

GENERAL MOTORS CORPORATION, Detroit, Michigan
October 27, 1959

International Union, UAW-AFL-CIO,
Solidarity House,
8000 East Jefferson Avenue,
Detroit, Michigan,

Attention: Mr. Leonard Woodcock, Vice President and Director, General Motors Department.

GENTLEMEN:

This is in response to your letter of October 20, 1959 wherein you request that arrangements be made for a meeting with you "for the purpose of collective bargaining concerning the exact terms of an agreement supplementary to our existing National Agreement whereby the employes we represent in your Indiana plants (not already members of the union) and new employes hired thereafter should be required as a condition of continued employment after 30 days following the date of such supplementary agreement or of their initial employment (whichever is later) to pay to the UAW a sum equal to the initiation fee charged at each of our local unions involved and monthly sums equal to the regular dues required of our members at each location."

Stated simply, you are asking us to enter into an agree-

ment with respect to a form of union security which you have characterized elsewhere in your letter as the "agency shop."

We have heretofore on numerous occasions, when you have requested that we enter into an "agency shop" agreement, declined to do so because we were, as we continue [fol. 106] to be, of the view that such an arrangement would violate the National Labor Relations Act, as amended.

The decision of the Indiana Appellate Court in *Meade Electric Company* v. *Hagberg* referred to in your letter does not decide the issue of the legality of an "agency shop" arrangement under the National Labor Relations Act, as amended. Consequently, our consistent view with respect to the legality of the "agency shop" remains unchanged as the result of that decision. This position is not a new one, of course, for as you stated in your letter of October 20, 1959, to us, in commenting upon the *Meade* decision:

> You indicated that even if there was affirmance on appeal, you would not bargain concerning an agency shop proposal unless you were satisfied that such a form of union security did not violate the National Labor Relations Act as amended.

Because we are of the opinion that an "agency shop" arrangement, such as that previously proposed by you and as now detailed in your letter of October 20, 1959, would violate the National Labor Relations Act, as amended if incorporated in a collective bargaining agreement, we respectfully decline to comply with your request for a meeting for the purpose stated in your letter of October 20, 1959.

Very truly yours,

Louis G. Seaton, Vice President.

[fol. 107] BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCERPTS FROM RESPONDENT'S EXHIBIT 2

Constitution of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW

Adopted at Atlantic City, N.J., October 1959

* * * * * * *

ARTICLE 16. Initiation Fees and Dues.

SECTION 1. The initiation fee, no part of which shall be considered as a Local Union fine, shall be not less than five dollars ($5.00) nor more than fifteen dollars ($15.00) for membership in a Local Union of the International Union excerpt that men and women returning from service in the Armed Forces of the United Nations shall be exempt from payment of an initiation fee upon presentation of military discharge papers to the Local Union Financial Secretary within one (1) year of the date of their discharge. One dollar ($1.00) of each initiation fee shall be forwarded to the International Secretary-Treasurer.

SECTION 2. All dues are payable on or before the first day of the month to the Financial Secretary of the Local Union; provided that where a Local Union, by those procedures provided in Article 47, Section 1, and with International Executive Board approval, establishes a method for periodic payment of total monthly dues in the course of that month, the dues of any member who, in conformance with such periodic arrangement, pays his total monthly dues in the course of the month shall automatically be considered to have been paid on the first day of said month. Commencing with the month of January 1960, Union ad- [fol. 108] ministrative dues shall be three dollars and seventy-five cents ($3.75) per month and Union Strike Insurance Fund dues shall be one dollar and twenty-five cents ($1.25) per month. Minimum monthly membership dues shall be the total of the foregoing sums. Nothing in this Article shall prevent any Local Union or unit of an Amal-

gamated Local Union from establishing, in accordance with the provisions of Article 47, dues in a greater amount than provided for in this Article, and any Local Union, or unit, which at the time when minimum monthly membership dues are increased pursuant to the provisions of this Article, has dues in a greater amount than the minimum monthly membership dues pre-existing the change shall automatically increase its dues by the amount of the change without the necessity of any additional Local Union or unit membership action, and such Local Union dues shall continue until the Local Union's or unit's membership, pursuant to the provisions of Article 47, changes the Local Union's or unit's dues structure. All dues established by this Article shall be uniformly required of all its members by each Local Union or unit of an Amalgamated Local Union except as specific exoneration may be granted pursuant to Section 14 of this Article or Section 12 of Article 13.

SECTION 3. Upon acceptance of the application, membership shall date from the first day of the month for which dues are paid.

SECTION 4. The Local Union shall set aside five cents (.05) of each month's dues payment as a Special Citizenship Fund to be used for the purpose of strengthening democracy by encouraging members, and citizens generally, to register and vote in community, state, and national elections and to carry on organizational and educational pro-
[fol. 109] grams directed toward the achievement of an ever higher understanding of citizenship responsibility and the need for active participation in the affairs of a free and democratic society. Local Unions are obligated to carry out such programs in conjunction with city, county, and state councils. Three cents (.03) of each month's dues payment must be laid aside by the Local Union as a special fund to be used only for educational or recreaational purposes as outlined in Article 26 of this Constitution, provided that two cents (.02) shall be apportioned to recreation. One cent (.01) of each month's dues payment must be set aside by the Local Union as a Retired Members Fund to be used only to promote and support programs benefiting retired members. Local Unions are obligated to carry out this policy in conjunction with community groups where community groups exist for the purpose of promoting and

supporting programs benefiting retired members and other retired workers.

SECTION 5. Every member shall have the privilege of having that portion of his dues which is allocated to the Local and International Citizenship Funds, as provided for in this Article, diverted to a non-partisan citizenship organization. Any monies so diverted will be collected in a separate fund by the International Secretary-Treasurer and, at periodic intervals, turned over to a non-partisan citizenship organization which will be designated by the International Executive Board. Any member may accomplish this diversion by individually notifying the International Secretary-Treasurer by registered mail, and the notification shall be effective for a period of one (1) year from date of request. The diversion may be continued from year to year by additional individual notifications to this effect.

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[fol. 110] SECTION 9. (a) From each member's Union administrative dues, each Local Union must remit a monthly per capita tax on one dollar and seventy-five cents ($1.75) and the Local Union shall retain two dollars ($2.00). In each month, each Local Union must remit the full one dollar and twenty-five cents ($1.25) amount of Union Strike Insurance Fund dues to the International Union which shall be placed in the International Union's Strike Insurance Fund. The member's monthly per capita tax and Strike Insurance Fund dues shall be forwarded to the International Secretary-Treasurer.

(b) One dollar ($1.00) of each reinstatement fee shall be forwarded to the International Secretary-Treasurer.

(c) If the Local Union does not charge back dues for the period following the date of automatic suspension to the date of reinstatement, but imposes a fine based upon the length of such period, the Local Union must forward to the International Union one-half of the fine so collected.

• • • • • • •

SECTION 12. The International Union shall set aside all sums remitted by Local Unions as Union Strike Insurance

Fund dues and the funds resulting shall be a special fund to be known as the International Strike Insurance Fund, to be drawn upon exclusively for the purposes of (1) aiding Local Unions engaged in authorized strikes and in cases of lockouts, and (2) assisting by donations or loans other International Unions and nonaffiliated Local Unions similarly engaged, and (3) meeting financial obligations or expenditures which this International Union or its affiliated Local Unions incur as a result of authorized strikes or in cases of lockouts, and then only by a two-thirds (2/3) vote of the International Executive Board. From the remainder [fol. 111] of each member's monthly per capita tax, the International Union shall set aside:

1. Five cents (.05) which shall be expended only for publication of "Solidarity," the official publication of the International Union or of any successor official publication.

2. One cent (.01) to the Fair Practices and Anti-Discrimination Fund to be expended only for the support and promotion of the programs and activities of the International Union in support of fair employment practices and in opposition to all discriminatory practices in employment.

3. Three cents (.03) as the International Union Education Fund to be expended only for the programs and activities of the International Union Education Department.

4. One cent (.01) as the International Union Recreation Fund which fund shall be apportioned to each region on a per capita basis.

5. Five cents (.05) as the Special Citizenship Fund to be used for the purpose of strengthening democracy by encouraging members and citizens generally to register and vote in community, state and national elections and to carry on organizational and educational programs directed toward the achievement of an ever higher understanding of citizenship responsibility and the need for active participation in the affairs of a free and democratic society.

6. One cent (.01) as the International Union Retired Members Fund, which shall be used only to promote

and support programs benefiting retired members, including such programs of the International Union relating to retired members as may be adopted from time to time, and to finance the operation of the International Union Retired Members Department.

[fol. 112] BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S MOTION FOR RECONSIDERATION AND LEAVE TO FILE BRIEF

Counsel for the General Counsel respectfully moves the Board to reconsider its Decision and Order in this case, issued February 20, 1961 and reported at 130 NLRB No. 54, for the following reasons:

1. The substantial significance and effect of the Board's Decision upon substantive rights and the administration of the Act warrant review and consideration of the questions raised, and not entirely disposed of, by the three separate opinions of Board Members Leedom, Jenkins, and Kimball, which together form the basis for the majority decision in this case.

2. A lack of definition in some of these opinions renders the basis for the majority decision unclear.

3. A defined decision would be uniquely desirable here, in the interest of effective administration and to enable interested parties, not only in right-to-work states but in all the other states as well, to recognize clearly their respective rights under the Act.

4. It is also respectfully requested that the Board grant permission for the filing of a brief by Counsel for the General Counsel in support of this Motion for Reconsideration in order to enable him to specify and develop more fully the above allegations.

Respectfully submitted. Emil Farkas, Counsel for General Counsel, National Labor Relations Board, Region Seven, Industrial Building, 232 W. Grand River, Detroit 26, Michigan.

[fols. 113-114] BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHARGING PARTY'S MOTION FOR RECONSIDERATION AND ORAL ARGUMENT

The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, respectfully moves the Board to reconsider its Decision and Order of February 20, 1961 (130 NLRB No. 54) and to grant oral argument thereon, for *each* of the following reasons independently and for *all* of the following reasons combined: [1]

I. The three-to-two holding of the Board flouts the clear language and plain intendment of the Labor-Management Relations Act to validate the agency shop.

II. Members Jenkins and Kimball, departing from the clear language and plain intendment of the Act, based their opinions on a patent error of fact.

III. Member Leedom, likewise departing from the clear language and plain intendment of the statute, based his opinion on a demonstrable error of law.

IV. The three opinions jointly constituting the "majority" view of the Board are externally and internally conflicting.

V. The Board's holding is contrary to prior Board decisions.

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[1] This Motion for Reconsideration and Oral Argument is filed pursuant to the direction of the Board allowing time for filing until Wednesday, March 22, 1961.

[fol. 115] IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—May 29, 1962

Before: CECIL, WEICK, and O'SULLIVAN, Circuit Judges.

This cause is argued by Harry S. Benjamin, Jr. for Petitioner and Melvin J. Welles for respondent and is submitted to the court.

[fol. 116] IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUDGMENT—June 8, 1962

This cause came on to be heard on the petition to review and set aside the order of the National Labor Relations Board, its request for enforcement of said order and on the transcript of the record, briefs and arguments was submitted to the Court.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that said order of the National Labor Relations Board be and the same is hereby set aside and that the Board's request for enforcement be denied.

/s/ Paul C. Weick, United States Circuit Judge.

[fol. 117] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 14786

GENERAL MOTORS CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

PETITION for Review of, And to Set Aside, a Final Order of the National Labor Relations Board.

OPINION—Decided June 8, 1962

Before: CECIL, WEICK and O'SULLIVAN, Circuit Judges.

PER CURIAM. The sole question in this case is whether or not an "agency shop arrangement" is lawful under the National Labor Relations Act, as amended, so as to require an employer to bargain with a labor union with respect to including it in a collective bargaining agreement. 29 U.S.C. Sections 151-166, as amended.

The Union made a demand in writing that the employer bargain with respect to its proposal that the existing National Agreement between the parties be supplemented so as to require as a condition of continued employment that all employees not already members of the Union, and new employees hired thereafter at the employer's Indiana locations must pay to the Union within thirty days after the agreement or of their initial employment, whichever is later, a sum equal to the initiation fee charged members of each of Union's locals and monthly sums equal to the regular membership dues required of its locals' members at each location. This type of arrangement is called an "agency shop."

The National Agreement which the Union sought to supplement contained provisions creating a "union shop" which required all employees to become members of the [fol. 118] Union within sixty days after the date of the agreement or of their employment and to pay initiation fees

and membership dues uniformly required. These existing provisions with respect to the "union shop" did not apply however to employees "employed in any state which prohibits or otherwise makes unlawful, membership in a labor organization as a condition of employment." A state statute in Indiana known as the Indiana Right to Work Law makes void and unenforceable any agreement conditioning employment upon union membership. Burns' Indiana Statutes Ann. Section 40-2703.

The employer refused to bargain with the Union over this proposal on the ground that any agreement containing such a provision would be in violation of the National Labor Relations Act, as amended.

The Union filed with the National Labor Relations Board a charge of unfair labor practice against the employer which was based upon the refusal of the employer to bargain with respect to this proposal. The Board heard the complaint and issued an order upholding the validity of the "agency shop" and finding that the employer violated Section 8(a) (1) and (5) of the Act by refusing to bargain with the Union with respect to it. The employer has petitioned this Court for review of the order and the Board cross-petitioned for enforcement. The Union was granted leave to file a brief amicus curiae.

The pertinent provisions of the Act are as follows:

Section 7.

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3). [29 U.S.C. Sec. 157.]

Section 8(a) (1) and (3)

> It shall be an unfair labor practice for an employer——

[fol. 119] (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: PROVIDED, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . PROVIDED FURTHER, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership: [29 U.S.C. Sec. 158 (a) (1) and (3)].

Section 14(b)

Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law. [29 U.S.C. Section 164(b).]

Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. Sections 401-531.]

Section 3(o)

'Members' or 'member in good standing,' when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions [fol. 120] of the constitution and bylaws of such organization. [29 U.S.C. Section 402(o).]

It is the position of the Board that the legislative history of the Act indicated an intent on the part of Congress to authorize union security agreements to eliminate free riders and that the statutory provision permitting union shops is broad enough to include the lesser form of an "agency shop arrangement."

We do not regard the "agency shop arrangement" as being something lesser than a "union shop." We believe it is entirely different. A Union security agreement is premised upon membership in a labor organization. An "agency shop" on the contrary is based upon an employee paying charges in lieu of union membership as a condition of employment.

It is asserted that an "agency shop arrangement" is valid under Indiana law as was held by an intermediate court in that state. *Medde Electric Co.* v. *Hagberg*, 129 Ind. App. 631, 159 N.E.2d 409. The Supreme Court of Kansas, however, reached a different conclusion in construing the constitution of that state. *Higgins* v. *Cardinal Manufacturing Co.*, 188 Kan. 11, 360 P.2d 456, cert. denied 368 U.S. 829. The question, however, to be decided in the present case is whether this type of arrangement is lawful under the National Labor Relations Act, as amended.

We think the provisions of the Act are clear and unambiguous and need no judicial construction. The language of Section 7 of the Act which provides "Employees . . . shall also have the right to refrain . . . except to the extent that such right may be affected by *an agreement requiring*

membership in a labor organization as a condition of employment as authorized in Section 8(a) (3)," [29 U.S.C. Section 157.] "means what it says and excerpts from the operation of the law only agreements requiring membership in a labor organization. (italics ours) An employee involuntarily subjected to the "agency shop arrangement," as a condition of his employment, is not a Union member or the equivalent of it. If Congress intended to permit the exaction of these types of charges in lieu of Union membership, as a condition of employment, it could easily have so provided in apt language. It is not for us, under the guise of construction, to enlarge the clear language of this stat- [fol. 121] ute. In our opinion, the provision for an "agency shop" would violate Section 7 and Sections 8(a) (1) and (3) of the Act as this type of arrangement is not excepted from the Act. The employer was therefore not required to bargain with respect to a proposal which was in violation of the Act.

The order of the National Labor Relations Board is set aside and the Board's request for enforcement is denied.

[fol. 122] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 123] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1962

No. 404

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

GENERAL MOTORS CORPORATION

ORDER ALLOWING CERTIORARI—November 19, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.